FEDERAL COURT OF AUSTRALIA

SZTIM v Minister for Immigration and Border Protection [2017] FCA 360

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| Appeal from: | *SZTIM v Minister for Immigration & Anor* [2016] FCCA 2124  |
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| File number: |  |
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| Judge: | **BEACH J** |
|  |  |
| Date of judgment: | 7 April 2017 |
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| Catchwords: | **MIGRATION** – Protection (Class XA) visa – refusal of visa application by delegate of Minister – decision of delegate upheld by Tribunal – dismissal of application for judicial review of Tribunal decision by Federal Circuit Court of Australia – whether it was relevant for the Tribunal to ask the appellant questions about her knowledge of another person’s grounds for seeking protection – whether Tribunal acted unreasonably – no jurisdictional error established – no error of Federal Circuit Court – appeal dismissed |
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| Legislation: | *Migration Act 1958* (Cth) ss 414, 425, 429  |
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| Cases cited: | *ATP15 v Minister for Immigration and Border Protection* (2016) 241 FCR 92*CQG15 v Minister for Immigration and Border Protection* [2016] FCAFC 146*Minister for Immigration and Border Protection v Eden* (2016) 240 FCR 158*Minister for Immigration and Border Protection v SZTJF* (2015) 149 ALD 552; [2015] FCA 1052*Minister for Immigration and Citizenship v Applicant A125 of 2003* (2007) 163 FCR 285*Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332*SZBEL* *v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152  |
|  |  |
| Date of hearing: | 1 March 2017 |
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| Registry: | New South Wales |
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| Division: | General Division |
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| National Practice Area: | Administrative and Constitutional Law and Human Rights |
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| Counsel for the Appellant: | Mr A Silva with Mr N Silva |
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| Counsel for the First Respondent: | Mr T Reilly |
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| Solicitors for the First Respondent: | Australian Government Solicitor |
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| Counsel for the Second Respondent: | The Second Respondent filed a submitting notice. |

ORDERS

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|  | NSD 1494 of 2016 |
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| BETWEEN: | SZTIMAppellant |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTIONFirst RespondentADMINISTRATIVE APPEALS TRIBUNALSecond Respondent |

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| JUDGE: | BEACH J |
| DATE OF ORDER: | 7 april 2017 |

THE COURT ORDERS THAT:

1. The appellant’s appeal be dismissed.
2. The appellant pay the first respondent’s costs of and incidental to the appeal.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

BEACH J:

1. The appellant appeals from the judgment of the Federal Circuit Court delivered on 19 August 2016. The primary judge dismissed the appellant’s application for judicial review of a decision of the then Refugee Review Tribunal (the Tribunal) made on 6 September 2013, affirming the decision of the first respondent’s delegate not to grant to the appellant a Protection (Class XA) visa.
2. For the reasons that follow, I have decided to dismiss the appeal.

# Background

1. The appellant is a 47 year old citizen of Fiji who arrived in Australia on a tourist visa with her cousin on 25 May 2012. On 21 August 2012, she applied for a Protection (Class XA) visa. She claimed to fear harm in Fiji due to her political opinions as an opponent of the Fijian military government and supporter of the Soqosoqo Duavata ni Lewinivanua Party (SDL).
2. In summary, the appellant’s asserted fear of harm was based on the following circumstances. First, the appellant claimed that in 2010 when she worked for the Fiji Police Force (FPF), she had been questioned about an alleged plot to remove the then Police Commissioner and had accordingly received verbal abuse including threatening phone calls. Second, the appellant claimed that after leaving her employment with the FPF, she was employed by a non-government organisation which allegedly brought her into conflict with a village leader who had links to the Fijian military police. She claimed that she was subsequently detained and questioned at the Queen Elizabeth Barracks in Suva, Fiji. As a result, the appellant then decided to leave Fiji and seek protection in Australia. Further, she claimed that since her arrival in Australia, military officers had visited her family home in Fiji and made enquiries about her.
3. On 10 October 2012, the delegate of the first respondent interviewed the appellant. On 19 November 2012, the appellant’s visa application was refused by the delegate.
4. On 11 December 2012, the appellant applied to the Tribunal for a review of the delegate’s decision. The appellant attended a hearing before the Tribunal on 5 September 2013; she was unrepresented and participated with the assistance of an interpreter.
5. On 6 September 2013, the Tribunal affirmed the decision of the delegate not to grant to the appellant a Protection (Class XA) visa.
6. On 24 September 2013, the appellant sought judicial review of the Tribunal’s decision. The matter was heard by the Federal Circuit Court on 22 July 2016 and on 19 August 2016 that Court dismissed the appellant’s application. She has now appealed that determination.
7. Before this Court, the appellant has relied on two grounds of appeal in her supplementary notice of appeal. They are, in substance, similar to the grounds of appeal relied upon before the Federal Circuit Court. Both of the grounds of appeal in essence relate to adverse credit findings made by the Tribunal against the appellant.

# the Tribunal’s CONSIDERATION

1. The Tribunal noted that a considerable part of the appellant’s claimed fears of returning to Fiji was based on the treatment that she claimed to have experienced whilst employed in the FPF. The Tribunal accepted that the appellant had worked for the FPF and that she had been questioned and had received verbal abuse and threatening phone calls. But the Tribunal found that such treatment was directly related to her work at the time and that those incidents did not give her an ongoing profile which would give rise to a real chance of serious harm in Fiji in the reasonably foreseeable future if she was to return.
2. As to her claimed detention at the Queen Elizabeth Barracks in 2012, which was allegedly due to her employment with a non-government organisation and conflict with a village leader, the Tribunal found that the evidence did not suggest that she had any profile as a critic of the military regime. The Tribunal was not satisfied that the village leader or another person with connections to the military had labelled the appellant a government critic or supporter of the SDL, or otherwise singled her out for harm as claimed. The Tribunal was also not satisfied that she had been taken to the Queen Elizabeth Barracks in 2012 and given adverse attention, treatment or any form of harm by the military regime.
3. Further, the Tribunal was not satisfied that the village leader or the Fijian military had or have any adverse interest in the appellant or any intention to harm her. Finally, the Tribunal was not satisfied that the Fijian military approached the appellant’s home in Fiji in 2013 to enquire about the appellant.
4. Accordingly, the Tribunal was not satisfied that the appellant met the refugee criterion in s 36(2)(a) of the Act or the complementary protection criterion under s 36(2)(aa) of the Act.
5. Let me focus on one aspect of the Tribunal’s consideration, being its adverse credibility findings that have relevance to the grounds of appeal. The Tribunal had significant concerns regarding the appellant’s credibility as a witness. The Tribunal considered that the appellant demonstrated a willingness to give “incomplete, evasive, misleading and/or false responses to clear and direct questions put to her by the Tribunal”. The Tribunal’s credibility finding was based on her answers to the Tribunal’s questions including the answers to questions about her cousin who had also applied for a protection visa. As to her credit, the Tribunal said the following at [11] (see also parts of [10], [14] and generally [32] and [33]):

While the applicant told the Tribunal early in the hearing that she: most recently came to Australia alone and with no other family member or relative; lives at a specified address in Townsville with her Australian cousin … his wife and children and that no other relative or person has ever lived with her at that address; works on Palm Island; does not personally know anyone else who has applied for a Protection visa in Australia. However, as put to her under section 424AA, all of the above claimed circumstances are inconsistent with other information before the Tribunal. Specifically, as put to the applicant, documentation provided in respect of her most recent Australian Tourist visa application together with Department movement records and Tribunal records indicate that: she applied for that visa with her cousin X (whose name and passport details are specified in that documentation); they travelled to Australia on the same flight, entered Australia on the same date and time; and they currently reside at the same address in Townsville. In response the applicant offered that she did not mention this earlier as her cousin has applied separately for a Protection visa and she didn’t think she needed to mention that cousin. However, as put to the applicant, this does not overcome the Tribunal’s concerns that she appears to have not been forthcoming or truthful in answering the Tribunal’s questions regarding aspects of her claimed circumstances, which in turn raises concerns about the truthfulness of other aspects of her evidence. When the applicant ultimately changed her evidence and told the Tribunal that she did travel to Australia with X, did live with X in Townsville and added that they also work together on Palm Island, the Tribunal asked, in the context of the time they appear to have spent together, she has any understanding of why X fears returning to Fiji. Her response impressed the Tribunal as evasive, comprising: long pauses; she has not read her cousin’s application or claims; and she does not know any detail about why X is seeking Australia’s protection. The Tribunal considers the above to raise significant concerns regarding the applicant’s credibility as a witness, and considers it to demonstrate a willingness on her part to give incomplete, evasive, misleading and/or false responses to clear and direct questions put to her by the Tribunal.

1. The adverse credit finding stems in part from the answers the appellant gave to the Tribunal’s questions when giving sworn evidence. It is convenient to set out the relevant exchanges.
2. The appellant gave the following evidence in relation to her arrival in Australia (at T9:3-10), which evidence was later conceded by her to be false:

TRIBUNAL: When you came to Australia most recently, did you come alone?

APPELLANT: Yes, member.

TRIBUNAL: You did not come with any other family member or relative?

APPELLANT: No, member. No.

1. Further, at T10:42 to T11:1 the following evidence, also false, was given by the appellant:

TRIBUNAL: Do you know anyone else who has applied for a protection visa in Australia? Anyone personally?

APPELLANT: No, ma’am.

1. Much later in the hearing, at T39:29 to T41:32 the following exchange occurred:

TRIBUNAL: I have an obligation to put to you in a certain format particular types of information which, subject to your comments, might lead to some adverse conclusions being drawn in your case, and I have to explain to you what the information is, as well as its relevance and possible consequences before I invite you to respond. So please do not respond until I do invite you to. Now, I have got a copy of the most recent tourist visa application that you lodged, which appears to have been signed on 9 March 2012.

It attaches documentation from a person who you identify as your cousin named - I will just get the exact name. My apologies. I have just got to find the correct document. [X], and her passport number is identified, and department movement records, which record when someone enters and exits a country, indicate that she arrived in Australia on the same flight as you at the same time as you and that she resides at the same address as you.

This information is relevant to the review because I asked you, when we first started today, whether you travelled to Australia with anyone and who lives at your address in Townsville. You said that you travelled alone and you did not mention this lady at all. If I rely on that information, I could draw the conclusion that you are not being forthcoming or entirely honest in some of the evidence that you are giving, which could cause general or broader credibility concerns about the truth of the claims and evidence that you have put forward. You have a right to request additional time to respond, but you are welcome to do so immediately if you wish.

APPELLANT: I apologise, ma’am. My mistake with [X] and me since our applications have been considered separately with her and me, and the plan of coming over was not planning together to come over together, and that's how I thought that it was not related to me coming with her. That was my understanding, just because I was – visa and application were considered separately on that occasion, and I thought – my understanding was that.

TRIBUNAL: The people living in your household and who have ever lived in your household in Townsville, when the information suggests you are living in the same household as this woman?

APPELLANT: With [X] - so we came together and she is now in Palm Island.

TRIBUNAL: Did you live together?

APPELLANT: Yes, from Townsville and then to Palm Island.

TRIBUNAL: So why did you not mention her when I asked who was living in your household in Townsville?

APPELLANT: Sorry, ma'am, that was just my understanding. I thought we were considered separate – separate people. That was just my understanding for that because I’m now in Townsville. Even in Palm Island, we work together same (indistinct) in Palm Island.

TRIBUNAL: You mentioned that you have made separate applications. Has she also applied for a protection visa?

APPELLANT: That is right, ma’am.

TRIBUNAL: Do you know what her claims are?

APPELLANT: No.

TRIBUNAL: You do not know why she fears returning to Fiji?

APPELLANT: No.

TRIBUNAL: Even though you lived together and came here together?

APPELLANT: That’s right. I haven’t read these submissions or written response.

TRIBUNAL: No, but have you - I mean, you lived together, you're cousins, you came here together. Have you not mentioned why you are afraid or why she is afraid to return to Fiji?

APPELLANT: We talk about that, why we afraid. We talk about it and --

TRIBUNAL: Why has she said she’s afraid?

APPELLANT: I did not really get into – like, we were just having our, our conversation (indistinct) like, to what she applied for- when we applied – like, we applied on different visas, ma’am. Like, we were dealt with separately and to the contents of what she has in the submission, man, honestly – to be honest with you- I don’t really know. I don’t really know.

TRIBUNAL: Yes, I am not asking about the detail or what she has written, or anything like that, but I mean, it seems clear now that you came to Australia together, you lived together in Townsville. You live and work together in Palm Island. It seems you have had a lot of opportunity to discuss why you are afraid to return to Fiji, each of you. I am just wondering even if you know the basis gist of why she might be afraid?

APPELLANT: I – honestly, I wouldn’t really understand her details.

TRIBUNAL: Look, I do not have any further questions that I need to ask…

# Federal Circuit Court

1. Before the Federal Circuit Court, the appellant had two grounds of review which both related to the Tribunal’s adverse credibility findings.
2. The first ground of review was that the Tribunal made a jurisdictional error by basing the impugned credibility findings on an irrelevant matter and by denying procedural fairness to the appellant. The appellant submitted that the Tribunal should not have asked the appellant questions about her knowledge of her cousin’s application for a protection visa. It was said that such questions were directed at an irrelevant matter. The primary judge rejected that contention and said (at [26]):

The difficulty with accepting the applicant’s submission that the Tribunal’s questions about the applicant’s knowledge of her cousin’s application for a Protection visa was irrelevant is that the Tribunal’s questioning of the applicant on that topic stopped at the point when the applicant said she did not know the grounds on which her cousin feared persecution in Fiji. In those circumstances, it is not possible to say what the Tribunal would have done had the applicant answered she did have knowledge of the grounds on which her cousin claimed to fear persecution in Fiji. It is more than conceivable, for example, that, had the applicant answered she did know what her cousin claimed in her application for protection, that may have suggested to the Tribunal that the applicant and her cousin had entered into a scheme in Fiji pursuant to which they would both seek to apply for a Protection visa in Australia in circumstances where neither of them had any legitimate grounds for claiming protection, and the Tribunal may have asked further questions about that. It would have been reasonably open to the Tribunal to explore whether the applicant and her cousin had entered into such a scheme because that would have been relevant to the assessment of the applicant’s credibility. I do not, therefore, accept the applicant’s submission that it was irrelevant for the Tribunal to ask questions about the applicant’s knowledge of the grounds on which her cousin claimed she feared persecution in Fiji . Nor do I accept that the Tribunal asked the questions for the purpose of its review of the application made by the applicant’s cousin.

1. The primary judge also held (at [27]) that even if the questions asked by the Tribunal were irrelevant, the Tribunal did not commit any jurisdictional error.
2. The second ground of review was expressed in terms that the Tribunal “was unreasonable in its negative credibility finding based on the [appellant’s] knowledge or otherwise of the basis of her cousin’s protection visa application”. The primary judge also dismissed this ground. His Honour said (at [32]) that the Tribunal did not make an adverse credibility finding based on the appellant’s knowledge or lack of knowledge of the grounds on which the appellant’s cousin had applied for a protection visa. Instead, so his Honour said, the Tribunal relied on the *manner in which* the appellant answered the Tribunal’s questions about her knowledge of the grounds on which her cousin applied for a protection visa. His Honour said at [32]:

There is nothing in the evidence before me that suggests it was not reasonably open to the Tribunal to find that the applicant’s answers were evasive. And it cannot be said that a decision-maker’s perception of evasiveness, at least if the perception is not found to have been unreasonably based, is irrelevant to the assessment of a person’s credibility.

1. The primary judge rejected this ground and also an additional argument concerning s 429 of the *Migration Act 1958* (Cth) (the Act). Accordingly, the primary judge dismissed the appellant’s application for judicial review.

# GROUNDS OF APPEAL

1. As I have said earlier, the two principal grounds of appeal being run before me are similar to the grounds of review raised before the primary judge.

## Ground one

1. As to the first ground of appeal, the appellant alleges that the primary judge erred by failing to find that the Tribunal made a jurisdictional error by basing its credibility finding on an irrelevant matter, by denying the appellant procedural fairness in contravention of s 425 of the Act, and by exceeding its jurisdiction under s 414 of the Act.
2. First, it is said that the Tribunal erred by basing its credibility finding on an irrelevant matter concerning the appellant’s knowledge or otherwise of the grounds of the cousin’s feared persecution.
3. But what the Tribunal in fact did was to base its credit finding in part on the evasive answers given by the appellant, as distinct from the content of the appellant’s knowledge or otherwise concerning the cousin’s perceived fears. The appellant had given false evidence about whether she had travelled to Australia with anyone, the nature of the relationship with such a person, and whether she knew anyone who had applied for a protection visa. There were also difficulties with her evidence concerning who had been living in her household when she was in Townsville. When the appellant ultimately gave a true version of these matters after being challenged by the Tribunal, it would appear that the Tribunal then embarked on a series of questions that it is fair to surmise might have been directed to investigating whether there had been potential collusion between the appellant and her cousin as to their asserted fears and whether the appellant might have said anything to her cousin about the appellant’s fears (“… Have you not mentioned why you are afraid…”) that differed from what the appellant had said to the Tribunal. It could not be said that that was not a relevant and legitimate line of inquiry for the Tribunal to pursue.
4. It has been suggested, in effect, that this questioning was engaged in for an improper purpose to gather evidence about the cousin’s application concerning the cousin’s visa. Apparently, the same Tribunal member was to deal with the cousin’s application at a later stage. Now if that was the purpose, that would have been inappropriate. But in my view the present context is one where the Tribunal, albeit undesirably close to the boundary line, was still within the range of legitimate questioning to explore the appellant’s version of events and her credibility, which had been substantially impacted by her earlier false answers in any event. Moreover, the Tribunal’s overall assessment of credit was based on a combination of factors and not just the evasion point concerning evidence relating to the cousin. And as to the evasion point, it would seem that the Tribunal was sceptical of the appellant’s assertions that she did not have some idea of the basis for the cousin’s claims or that the two had not discussed their claims; after all they had travelled to Australia together, lived together and had each made protection visa applications. Like the primary judge, I am not able to say that the Tribunal went beyond the scope of legitimate inquiry. The appellant had the onus before the primary judge of so establishing, but in my view did not do so.
5. Before proceeding further, let me make one specific observation and one general observation.
6. As to the specific observation, the appellant has said in her written submissions that:

His Honour erred at [37] in that the persistent way the Tribunal kept asking the question even after the applicant said she does not know makes it probable that it had a purpose in trying to get that information and most likely it was because it had the cousin’s hearing in just five days and consciously or subconsciously it wanted that information for that purpose.

1. I do not agree with the appellant’s characterisation of “persistent way” or her conclusion. The Tribunal did not persist with its questioning once it was clear that the appellant was denying knowledge. The conclusion falls with the absence of foundation.
2. As to the general observation, care needs to be taken by the Tribunal in relation to the questioning of one applicant about the circumstances of another applicant. The circumstances where this is appropriate are likely to be unusual. And if there is such questioning, the question in form and in substance should be targeted at eliciting relevant information concerning the applicant before it and circumstances relevant to that applicant’s visa application. Now imprecision in the form of a question can occasionally arise, leading to a *possible* inference that a broader and more impermissible range of inquiry is being undertaken. Accordingly and to the extent practicable, such imprecision should be minimised.
3. Returning to the appellant’s main complaint, it is said that by the Tribunal’s questioning and the finding of evasion, the Tribunal took into account an irrelevant consideration. But such an assertion is not maintainable. As I have indicated, the assertion proceeds from an incorrect premise. The Tribunal took the appellant’s evasive answers concerning the cousin into account on the question of the appellant’s credibility or lack thereof. There is little doubt that such credit issues are relevant subject matter. The Tribunal did not take into account the subject matter of information concerning the cousin’s application (as such) as being relevant to the appellant’s visa application. If it had, that may have been irrelevant and outside the subject matter, scope and purpose of the statutory task that the Tribunal was engaged in and the relevant exercise of statutory power. But it is difficult to be definitive, particularly in the present case.
4. Finally on this aspect, the appellant has said that the primary judge at [26] engaged in speculation as to what the Tribunal may have done if the appellant had answered differently. In one sense that is true, although in my view readily justifiable, but it takes the appellant nowhere. At the end of the day, the Tribunal took the appellant’s answers into account on the question of credit. That is legitimate and relevant. Now one does not know what the Tribunal would have done if the appellant had answered differently. But what one does know is that the actual answers were only taken into account on the appellant’s credibility.
5. Second, the appellant has asserted that there was a denial of procedural fairness by the Tribunal and consequently a failure to comply with s 425(1) of the Act. Like the primary judge, I reject that contention. In my view, the appellant was put on notice that her credibility was or might be in issue given her false testimony. Now true it is that the Tribunal did not expressly explain to the appellant why its questions concerning the cousin were relevant and what it may have had in mind, depending upon the answers given, in terms of for example potential collusion in their versions. But in my view it did not need to do so. The line of inquiry was not pressed given the appellant’s answers as to lack of knowledge. The Tribunal was also not obliged in the circumstances to say that it might treat the appellant’s answers as non-responsive, particularly as it had already put the appellant on notice that her credit was in issue. More generally, s 425 does not require the Tribunal to disclose its thought processes, preliminary conclusions or the significance of the questions being put (*CQG15 v Minister for Immigration and Border Protection* [2016] FCAFC 146 at [92] and [93] per McKerracher, Griffiths and Rangiah JJ). Now on this aspect, the appellant has made reference to *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152 to support the assertion that “the Tribunal should have stated why its questions about the cousin’s case was relevant so that the appellant could have given relevant [sic] response”. But I disagree. Nothing in *SZBEL* supports such an assertion (see also *Minister for Immigration and Citizenship v Applicant A125 of 2003* (2007) 163 FCR 285 at [88]). The appellant should have answered the questions frankly. The Tribunal considered that she was evasive. There was no obligation on the Tribunal to explain, before the questions were put, how her answers might be used and their relevance. And nor after the event, particularly where the answers were evasive or non-responsive.
6. Third, the appellant asserted that the Tribunal had breached s 414 by inquiring into the basis of the cousin’s fear forming part of the foundation for the cousin’s protection visa application. It is said that the Tribunal exceeded its power under s 414 because it was required to review the appellant’s case and not the cousin’s case. This assertion fails for a lack of foundation. In my view the Tribunal was inquiring through the lens of assessing the appellant’s case, albeit that one of the questions was more open ended than perhaps desirable. And as to the question of the cousin’s fears, it can be seen as an attempt by the Tribunal to get some idea of the mutual exchanges between the appellant and her cousin, rather than being for the collateral purpose of obtaining information relevant to the cousin’s application. As I have said, greater care should be taken in asking questions about other applicants particularly if the same Tribunal member (assuming this to be even desirable) is dealing with both. I do not need to elaborate further.
7. Finally in relation to ground one, I consider that the Minister’s specific reliance on *Minister for Immigration and Border Protection v SZTJF* (2015) 149 ALD 552; [2015] FCA 1052 and *ATP15 v Minister for Immigration and Border Protection* (2016) 241 FCR 92 at [42] as set out in [11] of the Minister’s written submissions to be unhelpful. Those cases do not directly provide authority for the points that I am addressing.
8. In summary, no error has been demonstrated in the primary judge’s analysis and accordingly the first ground is not made out.

## Ground two

1. As to the second ground of appeal, the appellant asserts that the primary judge erred by not finding that the Tribunal was unreasonable by making a credibility finding based on the way that the appellant had responded to questions about her cousin’s visa application and by not finding that the Tribunal had breached s 429 of the Act. As to these two aspects of the ground of appeal, let me deal with each in turn.
2. In relation to the first aspect, in essence it is said that the Tribunal acted unreasonably in basing its credit finding “on the way the [appellant] responded to questions about the cousin’s case” and that the primary judge was in error for not so finding. I would reject this argument.
3. First, the Tribunal was entitled to conclude that the appellant’s answers were evasive, particularly in the context where the appellant had earlier given false testimony.
4. Second, even if the appellant’s reticence or evasiveness may have been explained by the appellant’s reluctance to disclose information concerning her cousin, that does not deny the Tribunal’s conclusion.
5. Third, in any event there was more than an adequate basis from the appellant’s other testimony to justify the conclusion that the appellant had given misleading and false evidence.
6. Fourth, there was nothing illogical or irrational in the Tribunal’s reasoning process. The conclusion in essence that the appellant’s evidence was, to say the least, not reliable was well open on the material before the Tribunal. Moreover, the final sentence of the Tribunal’s reasons at [11] was based on the totality of the observations in [11].
7. Finally, the appellant has couched this aspect of her grounds as one of “unreasonableness”. *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 and subsequent authority have principally looked at this in the context of the exercise of a statutory power rather than whether a particular aspect of a chain of reasoning leading to an adverse credit finding was *by itself* “unreasonable”. In other words, one is considering the context of “legal unreasonableness” (see for example, *Minister for Immigration and Border Protection v Eden* (2016) 240 FCR 158 at [58] et seq), albeit that an impermissible or flawed chain of reasoning may in some cases ultimately support a conclusion of “legal unreasonableness” in the exercise of statutory power. But in my view, in the present context, this aspect of the appellant’s ground is little more than a merits challenge. Moreover, neither of the two contexts referred to in *Eden* at [60] have been established in the present case.
8. The appellant has raised a second aspect under this ground of appeal, namely that s 429 of the Act was contravened. Now this is not said so much for the appellant’s case of itself, but rather “dealing with the cousin’s case within the [appellant’s] case”. Somehow it is now said by the appellant that this could excuse her evasive answers before the Tribunal.
9. The appellant in her written submissions submitted the following:

The nature of the questions could have made the applicant apprehend various matters and thus be inhibited in answering those questions. Firstly she could have feared that the answer she may give could result in the Tribunal disclosing that information to her cousin, causing damage in her relationship with the cousin. Secondly it would have gone against her ethics and morals that whatever may have been disclosed to her by her cousin in confidence could not be disclosed to anyone else unless legally bound to do so.

His Honour erred at [36] in that whether the appellant know about the cousin’s case or not and even assuming that she did not know about it, still she would have been torn between wanting to answer the Tribunal’s question on whom her visa depends and on the one hand and not wanting to say anything that might even remotely upset her cousin.

1. In my view, these submissions are misconceived. There is no suggestion that the hearing in relation to the appellant’s application for review was not private. It clearly was. Further, the other hearing in relation to the cousin’s application for review had not yet taken place. Accordingly, s 429 had not been enlivened in relation to the cousin’s application or its hearing. And even if it was in a preliminary way in relation to information on the cousin’s file, it had not been contravened.
2. Generally, it is unsustainable to contend that s 429 is triggered if during the hearing of one application, information is enquired of concerning another person who has made a separate application. And as to the appellant’s submissions that I have set out above, they are merely her potential excuses for not being more forthcoming before the Tribunal. Further, those submissions have a counterintuitive flavour. If such potential excuses were genuine, they would fortify the Tribunal’s conclusion that the appellant’s evidence was unreliable. But this is the very conclusion that the appellant has sought to challenge through the mechanism of asserting jurisdictional error.
3. Finally, the appellant’s contention that s 429 “prohibits dealing with the cousin’s case within the [appellant’s] case” is wrong factually because that was not what the Tribunal was seeking to do in any event.
4. In summary, no error was made by the primary judge.

# CONCLUSION

1. None of the appellant’s grounds of appeal have been made good. The appeal must be dismissed with costs.

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| I certify that the preceding fifty-two (52) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Beach. |

Associate:

Dated: 7 April 2017