FEDERAL COURT OF AUSTRALIA

SZTXS v Minister for Immigration and Border Protection
[2016] FCA 726

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| Appeal from: | *SZTXS v Minister for Immigration* [2016] FCCA 311  |
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| File number: | NSD 342 of 2016 |
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| Judge: | **RARES J** |
|  |  |
| Date of judgment: | 23 May 2016 |
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| Legislation: | *Migration Act 1958* (Cth) ss 36(2)(a), 36(2)(aa) |
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| Cases cited: | *Minister for Immigration and Citizenship v SZIAI* (2009) 83 ALJR 1123*Re Minister for Immigration and Multicultural Affairs; Ex parte Durairajasingham* (2000) 168 ALR 407  |
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| Date of hearing: | 23 May 2016 |
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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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| Category: | No Catchwords |
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| Number of paragraphs: | 52 |
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| Counsel for the Appellant: | The Appellant appeared in person |
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| Counsel for the First Respondent: | Ms C Hillary |
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| Solicitor for the First Respondent: | DLA Piper Australia |
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| Counsel for the Second Respondent: | The Second Respondent filed a submitting notice |

ORDERS

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|  | NSD 342 of 2016 |
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| BETWEEN: | SZTXSAppellant |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTIONFirst RespondentADMINISTRATIVE APPEALS TRIBUNALSecond Respondent |

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| JUDGE: | RARES J |
| DATE OF ORDER: | 23 MAY 2016 |

THE COURT ORDERS THAT:

1. The appeal be dismissed.

2. The appellant pay the first respondent’s costs.

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

REASONS FOR JUDGMENT

(REVISED FROM THE TRANSCRIPT)

**RARES J:**

1 This is an appeal from the decision of the Federal Circuit Court refusing the appellant’s application for Constitutional writ relief in respect of the decision of the Refugee Review Tribunal given on 4 February 2014 that affirmed the Minister’s delegate’s decision not to give the appellant a protection visa: *SZTXS v Minister for Immigration* [2016] FCCA 311.

## Background

2 The appellant is a citizen of Pakistan who arrived in Australia in June 2012 and applied to the Department for a protection visa on 4 July 2012. After interviewing the appellant, a delegate refused to grant the visa on 28 December 2012.

3 In his application for a protection visa the appellant included a detailed statement of his claims that he appears to have prepared with the assistance of a solicitor migration agent who represented him both before the delegate and the Tribunal. In essence, the appellant claimed to have been a member of the Shia minority Muslim sect in Pakistan and to have been a leader of his fellow worshipers in Rawalpindi where he lived. He worked for a large Pakistani government owned corporation. He claimed to have commenced participating in religious ceremonies and festivals of a particular Shia organisation from around 1996 and to have led his fellow worshipers in that organisation for religious activities. He claimed that his role required him also to protect the religious leader of their organisation. He claimed that the majority Sunni population of Pakistan was anti-Shia and that his problems had started when he became very active and vocal as a local leader of this organisation.

4 He claimed that, in June 2007, a procession of his organisation’s followers was attacked by unknown fundamentalist Sunnis but that he and his fellow worshipers were charged by the police, despite being victims. He claimed that he and about 14 others had been arrested and sent to prison in Gujrat for about two weeks before they were granted bail and then that the Court proceedings had lasted a further three years. He claimed that during that period he received numerous death threats designed to persuade him to disassociate himself from the Court case and his religious organisation.

5 He claimed that his nine-year old daughter had been harassed outside her school a couple of times by persons saying that her father would be killed if he did not cooperate with them. He claimed that the police never did anything about his reports to them of these incidents except for one occasion in which he succeeded in making a first incident report, or **FIR**, against some unknown individuals who had threatened him, but that the police never followed that complaint through.

6 He claimed that on 21 October 2011 some unknown bike riders stopped him and his friends on their way back from a particular visit and fired shots at them, injuring a few of his friends very seriously but that he escaped injury. He claimed that the police did nothing to follow up their report of that incident and that, as a result, he started panicking because the lives of his whole family were at stake. He claimed that, at the beginning of 2012, he was told that he had to pay money to those who were causing threats to be made to him if he wanted to live in Pakistan. He claimed that he had spoken to the elders in the Shia community who had told him that they would talk to elders in the Sunni community, who controlled the Sunni mosques in his local area, but that, ultimately, the Shia elders could not help him.

7 The appellant claimed that he decided to leave Pakistan and seek protection in Australia or any other country and that he applied for a visitor visa in late 2011 and was fortunate to have it granted quickly. He claimed that he had commenced making arrangements to leave Pakistan to come here as soon as he found his visa application had been successful and that, in the meantime, he kept a low profile and never let anyone know that he had the visa. He claimed that, however, he had to remain in Pakistan for some time because he had already planned to go, in May 2012, to Saudi Arabia for a semi-religious pilgrimage along with his whole family. He claimed that after he and his family had returned from Saudi Arabia he left Pakistan on 5 June 2012 and arrived here the next day, leaving his three children and wife to carry on their lives there, despite them being under threat. He claimed that he was reluctant to apply for protection immediately, even though he had planned to do so before leaving Pakistan. He claimed that there was no safety for him in Pakistan and that he ought be granted a visa.

8 When he was interviewed by the delegate, the appellant also claimed that he did not bring his family with him as he was uncertain of work opportunities.

9 During the interview with the delegate, the appellant had expanded on the account of the incident in June 2007. He claimed that he and members of his religious organisation were travelling on a bus to a religious singing event (being the “procession” in his original claim) and that the bus was attacked in a village or town about four and a half hours after they had left Rawalpindi. The delegate was concerned, after asking detailed questions about the alleged attack, that the appellant had been unable, *first*, to name the bus company from whom he had hired the bus, *secondly*, to explain why the attack occurred about four and a half hours after the bus had left Rawalpindi by people whom he did not know, and, *thirdly*, to explain how the bus could have been identifiable as carrying members of his particular organisation as it was unmarked and had been hired from an unknown bus company.

10 The delegate found that the appellant had not presented as a credible witness and that there were major inconsistencies in his account of his core claims. The delegate was not prepared to rely on documents that the appellant had provided in support of his claim, including FIR reports. The delegate also had difficulties in understanding how the appellant could hold a well-founded fear of persecution in Pakistan, given that he had voluntarily returned to that country after his journey to Saudi Arabia, particularly in light of the claimed earlier threats.

11 Those concerns led the delegate to form what he described as “a positive state of disbelief in respect to all of the applicant’s core protection claims”. The delegate found that the appellant had not applied for asylum during multiple trips to countries that were signatory to the *Refugees Convention*, including France and the United Kingdom. The delegate concluded that the appellant should not be granted a protection visa.

## The proceedings before the Tribunal

12 At the hearing before the Tribunal, the appellant also sought to have a claim for complementary protection considered in the review of the delegate’s decision, together with his *Convention* claims, pursuant to ss 36(2)(a) and 36(2)(aa) of the *Migration Act 1958* (Cth). The appellant attended a hearing at the Tribunal and gave evidence represented, as I have said, by his solicitor migration agent.

13 The Tribunal accepted country information that Shias in Pakistan were the subject of violent attacks by Sunni fundamentalist groups. It found that there was country information about such attacks, including attacks in Rawalpindi in 2002, December 2009, and November 2012. However, the Tribunal rejected the appellant’s claims to protection both under the *Convention* and on the complementary protection grounds because it disbelieved his claims.

14 It questioned him about his decision to leave Pakistan in light of attacks that the appellant claimed had occurred in September 2010 and October 2011 that had left him thinking that he was lucky that he was still alive, and would be killed in the future. He claimed to the Tribunal that he decided to leave as soon as possible after the incident in October 2011.

15 The Tribunal remarked that “surprisingly”, although he had been issued with a visitor visa for Australia on 14 January 2012, the appellant chose not only to remain in Pakistan but to continue his religious activities, as he had done before that time, up to the time he left in early June 2012. The Tribunal concluded that this behaviour appeared to be inconsistent with that of a person claiming that his life was in danger because of those very activities. It recorded that when it put that concern to the appellant, he had said that he wanted to travel with his family to Saudi Arabia for their religious duty to which I have referred. He told the Tribunal that, had the Saudi authorities not granted him and his family visas to travel there, he would have come to Australia earlier, but he believed that he had a religious obligation to go to Saudi Arabia first.

16 In these circumstances, the Tribunal did not believe that the appellant would choose to remain in Pakistan, rather than travel, more promptly, to Australia, or another country where he would have at least temporary sanctuary. It did not believe the appellant’s evidence that, even if it meant losing his life, he considered it to be his responsibility to continue his religious activities after October 2011.

17 The Tribunal considered that it was very significant that the appellant had not referred to a claimed incident that occurred on 17 September 2010 prior to his raising that matter with the Tribunal. He claimed that that incident left him with injuries, about which he had complained, and that the police had made an FIR about it. The Tribunal did not accept the appellant’s explanation that two versions of his original protection visa statement had been prepared and that the version attached to his application must have omitted the September 2010 incident.

18 The Tribunal also rejected the appellant’s accounts concerning the course of the Court proceedings arising from the bus incident in 2007, until those proceedings were concluded in a judgment issued by the court in February 2009. The appellant had claimed to the Tribunal that none of the attackers was present in court. But, it noted that the court judgment that the appellant produced had stated that at least two of the Sunni men involved in the fight were present on the day of the judgment. The Tribunal considered that fact reflected poorly on his credibility.

19 The solicitor migration agent also made submissions to the Tribunal that it recorded in its reasons. The solicitor migration agent said that he had no objection to the “level” of interpretation at the hearing, and that he, himself, was an Urdu speaker. However, the solicitor migration agent suggested that some of the questions put to the appellant were not properly understood, and that that explained why some of his translated answers had given rise to the credibility concerns that the Tribunal had explored during the course of the hearing.

20 The Tribunal found that the appellant:

… well understood the questions he was being asked but he has given inconsistent evidence. The Tribunal rejects the representative’s submissions that the [appellant], in his initial evidence, meant to say that at least two of the Sunni men with whom he had fought were present at court on the last court day.

21 It explained that it had questioned the appellant a number of times about his evidence as to when and who was present during the course of those court proceedings. It considered that his change of evidence to say that the two Sunni men were present in the court on the last day of the proceedings was a poor attempt to reconcile his account with what was in the written judgment of the court.

22 The Tribunal considered that the appellant had had ample opportunity to say when he decided to leave Pakistan and that he had clearly indicated that had been after the attack in October 2011.

23 The Tribunal considered the solicitor migration agent’s submission that, when it assessed credibility, it had to consider that the appellant had been nervous at his interview with the delegate, that there were difficulties in communicating through an interpreter and it should have regard to lapses of memory. The Tribunal said it had made allowances for those matters but found they did not excuse or explain the concerns that it held about the appellant’s credibility.

24 It disbelieved the appellant’s claims that he, his wife or anyone in his family had ever received threatening telephone calls or threats of any kind. It found that his account of the bus being attacked in June 2007 was false, as was all the evidence concerning its alleged sequel. It disbelieved his claims that his daughter had been approached by people threatening him, that he had been attacked by a group of men in September 2010, that shots had been fired at him in October 2011 and that the police or anyone else had been approached or issued FIRs about those or any other incidents concerning him.

25 It accepted that the appellant was a practising Shia from Rawalpindi but disbelieved his claims that he performed any additional religious activities. It found that there was no credible evidence that, *first*, the appellant or any member of his family had ever been harmed by anyone in Pakistan or that anyone in Pakistan wished to harm him and, *secondly*,why he left Pakistan and had not returned there.

26 The Tribunal considered the documents that the appellant had provided in support of his claims, including a lawyer’s letter, the court judgment and the FIR but it found that those documents did not overcome or alleviate its concerns about his credibility and gave those documents no weight. The Tribunal rejected the solicitor migration agent’s submission of 20 November 2013 that the delegate should have sought advice from the Department or other sources as to the authenticity of those documents, that the documents that had been provided to the delegate and the Tribunal were certified and that the originals were available. The Tribunal said that, in view of its finding on the appellant’s credibility, there was no need for it to make any inquiries into the documents and the facts that they purportedly were certified and that the originals were available, did not demonstrate to it that their contents and the appellant’s claims about suffering harm in Pakistan were true.

27 The Tribunal found that the appellant had previously travelled out of Pakistan, including in 2009, when he went briefly to Great Britain, and in 2012 when he went to Saudi Arabia. The Tribunal found that those journeys had nothing to do with any claim to fear harm. It disbelieved his claims that his wife and children had moved from their home to another part of Rawalpindi due to any fear of harm on his part.

28 The Tribunal considered a number of documents that the written submissions dated 20 November 2013 had attached. It also considered a letter and documents provided on the day it made its decision, 4 February 2014, by the solicitor migration agent. These included media reports of a suicide bomber detonating an explosive device in a parking area outside what the appellant claimed to be the mosque that he attended in Rawalpindi near his home at which on 17 December 2013, according to the news reports, three people were killed, including two police officers, and 14 wounded. Those documents also included a medical record that indicated that the appellant’s brother had been injured in the explosion and had been admitted to hospital for about a week.

29 The Tribunal said that it had carefully considered all of the submissions made to it together with country information. It found that there were about 20 million Shias in Pakistan. It found that, according to country information, attacks on Shias took place predominantly in the north-west of the country and that there had been only isolated attacks in Rawalpindi. It acknowledged the country information provided by the solicitor migration agent about the recent sectarian clashes in Rawalpindi in November 2013 and the mosque attack of December 2013 in which the appellant’s brother was injured but found that “overall, reported attacks on Shi’as in Rawalpindi are few and isolated”.

30 It found there was no credible evidence that the appellant would suffer harm in Pakistan. The Tribunal found that despite the appellant’s claims that Shias were being killed and that the Pakistani government failed to provide them protection, the risk of the appellant suffering serious harm in the part of Pakistan from which he originated was remote. It considered that the pattern of the then recent attacks in Rawalpindi was random and isolated. Accordingly, it found that there was no real chance that the appellant would suffer serious harm in Pakistan based on his religion or any other *Convention* ground, and that he did not hold a well-founded fear of persecution.

31 The Tribunal dealt next with the complementary protection ground. It said that as it had found that the appellant was not a witness of truth, there was no credible evidence, *first*, that he had suffered harm in Pakistan, *secondly*, that anyone there wished him harm, *thirdly*, why he had left Pakistan and also why he did not return there. Although it accepted that he was a Shia from Rawalpindi, it found that, for the same reasons as it had discussed in relation to his *Convention* grounds, the risk of the appellant suffering significant harm on any of the grounds claimed was remote and that there were no substantial grounds for believing that, as a necessary and foreseeable consequence of his removal from Australia to Pakistan, there was a real risk that the appellant would suffer significant harm. Accordingly, it affirmed the decision not to grant the appellant a protection visa.

## The proceedings before the trial judge

32 The appellant raised a number of grounds in his amended application in the Federal Circuit Court as to why the Tribunal had committed a jurisdictional error. In substance he repeated those grounds on this appeal, although they were differently expressed. The appellant also relied on an affidavit before the trial judge to establish matters that he said the Tribunal had failed to take into account.

33 The grounds of the amended application below were, in essence, that the Tribunal had made a jurisdictional error:

(1) by concluding that the appellant was not a credible witness;

(2) because the appellant had not had proper interpretation of his evidence in the Tribunal;

(3) by failing to understand that the appellant had to continue his religious work before he could leave Pakistan;

(4) by failing to make inquiries about his documents before concluding that they presented false information;

(5) by coming to an illogical, irrational or manifestly unreasonable understanding of the *Convention* test for protection;

(6) by failing to take into account relevant considerations; and

(7) by not affording natural justice, because it had preconceived views.

34 In a careful reserved judgment, the trial judge rejected each of those grounds. He found that the first ground amounted to a disagreement with the Tribunal’s findings concerning the appellant’s credibility which were findings of fact that did not give rise to jurisdictional error.

35 In rejecting the second ground, his Honour found that the appellant had not pointed to any error in interpretation at the Tribunal hearing. He also found that there was no evidence that any of the alleged errors had effectively prevented the appellant from receiving a fair hearing. The trial judge rejected the third ground. He held that the Tribunal had acted on a basis reasonably open to it in rejecting the appellant’s claims that he had been justified in continuing his religious work before leaving Pakistan for Australia. His Honour rejected the fourth ground finding that the Tribunal, in the circumstances, did not have a duty to inquire about the appellant’s proffered documents and that the appellant had not identified any critical fact, the existence of which might be easily ascertained by such an inquiry, that could have affected the decision. His Honour had regard to *Minister for Immigration and Citizenship v SZIAI* (2009) 83 ALJR 1123. The trial judge noted that the Tribunal had explained why, despite the solicitor migration agent’s submissions to it, it considered that there was no need to make such inquiries, namely, because it had found the appellant not to be a witness of truth.

36 His Honour rejected the fifth ground and found that the Tribunal had applied, as it clearly did, the correct test for considering whether the appellant had a well-founded fear of persecution for a *Convention* reason. In essence, he held that the appellant’s argument was no more than a disagreement with the Tribunal’s ultimate conclusion and its earlier findings of fact so that there was no jurisdictional error.

37 The trial judge found that, on a fair reading of the Tribunal’s decision record, it had considered all of the evidence referred to in the appellant’s affidavit of 3 July 2014 but had based its decision on its lack of satisfaction with his evidence and, accordingly, his Honour rejected the sixth ground that the Tribunal had failed to take into account relevant information. His Honour also rejected the seventh ground that effectively alleged bias on the basis. He held that there was no foundation put forward for that assertion.

## This appeal

38 The appellant raised seven grounds in his notice of appeal to this Court, all of which were directed to the Tribunal’s decision, as opposed to alleging error on the part of his Honour. That is understandable given that the appellant is a person who is representing himself now. Those grounds, in essence, were that:

 the Tribunal had uncontested evidence in the documents that he had given to it as to what had happened to the appellant in Pakistan and should have accepted his evidence about the events in those documents (ground 1);

 the Tribunal was wrong to use the appellant’s delay in leaving Pakistan to come to Australia after the grant of his visa in finding that he was not in fear of his life and ought not be accepted as a witness of truth (grounds 2, 5 and 6);

 the Tribunal had failed to understand his circumstances and that “my wife has had difficulties with her pregnancy (at the interview I did not mention that) but the Tribunal had evidence to support and justify my delay.” (ground 5);

 the Tribunal had committed a jurisdictional error because of interpretation difficulties (ground 4);

 the Tribunal committed a jurisdictional error by ignoring the weight of the appellant’s evidence of his religious activities as a Shia and leader of his Shia organisation (grounds 3 and 7).

39 The transcript of the Tribunal hearing was in evidence before the trial judge. It recorded that during the course of the hearing, the Tribunal questioned the appellant about his continuing religious activities up to when he left in June 2012. He gave an answer that he was a part of the organisation to which he claimed to belong and was the leader of that group and added “and I have even the cards to show you if you want to see the card for that” [sic]. The transcript recorded that the Tribunal responded: “Okay I don’t need those right now.” after which the appellant answered through the interpreter: “And because of that I have to continue my activities. It’s my responsibility.”

40 The appellant claimed before me in his written submissions that this exchange in the hearing amounted to the Tribunal refusing to receive evidence of the cards to which the appellant referred in support of his claim and his explanation as to why he continued his activities.

41 The appellant made oral submissions in support of his grounds. He told me that he had been attacked many times and had explained to the Tribunal his reasons for delay but that the Tribunal had treated his evidence as of no weight and had not considered all of the supporting material, including his documents that supported his case. He argued that the Tribunal had refused to allow him to tender the cards, referred to in the passage of evidence that I have set out at [39]. He argued that had it accepted those cards, the Tribunal would have investigated, or done its own research to discover, that he really was the leader of the Shia community that he claimed to be. He submitted that he could tender further documents and pictures now to evidence his leadership and participation in religious activities. He accepted that there was no evidence that he had given any of the documents to which he referred today in that context to the Tribunal.

42 He contended that the Tribunal had not considered the material concerning the injuries his brother received in the attack of 17 December 2013 that had been submitted with his solicitor migration agent’s letter of 4 February 2014. He argued that there were difficulties with interpretation in the Tribunal hearing to which I have referred earlier. He claimed that there was no reason why he should have left his stable job with the government owned company for which he worked if he had not been threatened and that the Tribunal had clearly ignored his evidence when deciding that he was not credible. He sought orders that the Tribunal’s decision should be quashed.

## Consideration

43 In my opinion, the trial judge correctly rejected each of the grounds before him for the reasons that he gave.

44 The first ground of appeal is no more than an argument that the Tribunal ought to have acted on the documents which the appellant presented and should not have come to its own evaluation of him as a witness whom it positively disbelieved. The role of the Court in judicial review proceedings is to determine whether the administrative decision-maker has acted in accordance with the law in exercising the jurisdiction that the Parliament has conferred. The determination of the facts, including the assessment of evidence, are matters within the jurisdiction of the Tribunal. As McHugh J said in *Re Minister for Immigration and Multicultural Affairs; Ex parte Durairajasingham* (2000) 168 ALR 407 at 423 [67]:

… a finding on credibility is the function of the primary decision-maker par excellence.

45 It was open to the Tribunal to come to its findings of credibility for the reasons that it explained. Having read the material in the appeal papers including, of course, the Tribunal’s decision, I am satisfied that there was evidence as to the facts before the Tribunal on which it was entitled to arrive at the conclusions that it did. I reject ground 1.

46 Grounds 2, 5 and 6 in essence complained of the Tribunal’s use of the appellant’s delay in leaving Pakistan to assess whether he were truly in fear of his life. In essence, it reasoned that a person who was truly in fear of his life, who had the opportunity of coming to Australia shortly after his receipt of a visitor’s visa on 14 January 2012, would not have delayed for months so as to continue his religious activities that had generated the threats he claimed, go to Saudi Arabia, and then to return to the very place where he said his life was in danger, before coming to Australia. In my opinion, the Tribunal’s explanation as to how it arrived at its conclusions in that regard were open to it. I am unable to detect any jurisdictional error in the way it evaluated the evidence and arrived at those conclusions.

47 The material which the appellant sought to rely on before me about his wife’s pregnancy was material of which he knew during the course of the whole administrative proceedings before the delegate and the Tribunal. However, he chose not to put those matters before the delegate or the Tribunal. As the appellant acknowledged, he had not put anything to the Tribunal concerning his wife’s condition. Accordingly, the Tribunal could not have made, and did not make, an error in failing to take that matter, of which it was not informed, into consideration. It follows that this was not material that could demonstrate that the Tribunal made a jurisdictional error or that the Court should interfere at this stage.

48 Grounds 3 and 7, again, amounted to no more than challenges to the Tribunal’s factual findings that it did not believe that the appellant was a religious leader or performed any activities, beyond simply those which he, as an ordinary Shia Muslim, would observe in the practice of his religion. In my opinion, no jurisdictional error is arguable in relation to the Tribunal’s findings about those matters.

49 Ground 4 must also fail, because the appellant did not have any objection to the level of interpretation at the hearing, as the Urdu-speaking solicitor migration agent, who represented the appellant before the Tribunal, submitted. The Tribunal recorded that position, in substance, in its decision, as I noted at [19]-[20] above. Moreover, there was no evidence that any of the interpretation was inaccurate. In my opinion, the ground must fail.

50 I also do not accept the appellant’s argument that the Tribunal member refused to allow him to tender, or rejected the tender of, cards that he could show the Tribunal if it wished to see them. In my opinion, the Tribunal simply indicated that it did not need to see the cards at the precise moment at which the appellant volunteered to show them to it, but it was not making a definitive rejection of their tender. It must be borne in mind that the appellant was represented by a solicitor migration agent who was well able to tender, or seek to tender the cards at a later point during the hearing or to object to the Tribunal not receiving them, but did not do so. That representative also made a submission on 4 February 2014 with further information for the Tribunal’s consideration, but that did not include those cards or any reference to them. The solicitor migration agent made no complaint to suggest that he understood that any tender of such material had been conclusively, or otherwise, rejected. I am not satisfied that the Tribunal made any jurisdictional error in that regard.

51 Likewise, it is plain beyond argument that the Tribunal did consider the material in the solicitor migration agent’s submission of 4 February 2014, before it made its decision later on that day. That is because [89]-[92] of its decision record expressly referred to that material and considered it in detail, as I have explained at [28]-[29] above.

## Conclusion

52 Having considered the appellant’s arguments, both oral, and written, as well as those recorded in his amended application before the Federal Circuit Court and notice of appeal in this Court, together with considering the material in the appeal papers, I am satisfied that the appellant has not been able to demonstrate or point to any matter that could give rise to a jurisdictional error on the part of the Tribunal or error by his Honour. Each of the grounds of appeal fails. In my opinion, 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 Rares. |

Associate:

Dated: 17 June 2016