FEDERAL COURT OF AUSTRALIA

GGV18 v Minister for Home Affairs [2019] FCA 1221

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| Appeal from: | *GGV18 v Minister for Home Affairs & Anor* [2019] FCCA 593  |
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| File number: |  |
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| Judge: | **ROBERTSON J** |
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| Date of judgment: | 6 August 2019 |
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| Catchwords: | **MIGRATION** – appeal from Federal Circuit Court of Australia – judicial review by that court of decision of the Administrative Appeals Tribunal – whether Tribunal failed to consider corroborative evidence and thus fell into jurisdictional error  |
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| Legislation: | *Migration Act 1958* (Cth)  |
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| Cases cited: | *Minister for Immigration and Citizenship v SZNSP* [2010] FCAFC 50; 184 FCR 485 *Minister for Immigration and Citizenship v SZRKT* [2013] FCA 317; 212 FCR 99*Re Minister for Immigration and Multicultural Affairs; Ex parte* *Applicant S20/2002* [2003] HCA 30; 198 ALR 59  |
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| Date of hearing: | 6 August 2019 |
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| Registry: |  |
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| Division: |  |
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| National Practice Area: |  |
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| Category: | Catchwords |
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| Number of paragraphs: | 27 |
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| Counsel for the Appellant: | Mr VA Kline |
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| Solicitor for the First Respondent: | Ms M Donald of Sparke Helmore |
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| Counsel for the Second Respondent: | The Second Respondent submitted to any order of the Court save as to costs |

ORDERS

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|  | NSD 629 of 2019 |
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| BETWEEN: | GGV18Appellant |
| AND: | MINISTER FOR HOME AFFAIRSFirst RespondentADMINISTRATIVE APPEALS TRIBUNALSecond Respondent |

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| JUDGE: | ROBERTSON J |
| DATE OF ORDER: | 6 AUGUST 2019 |

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The appellant pay the costs of the first respondent, as agreed or assessed.

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

REASONS FOR JUDGMENT

ROBERTSON J:

1. This appeal is from the judgment of a judge of the Federal Circuit Court of Australia delivered on 2 April 2019 dismissing, with costs, the amended application to that court for judicial review of the decision of the Administrative Appeals Tribunal dated 1 November 2018. The Tribunal’s decision was to affirm the decision not to grant the appellant a protection visa.
2. As found by the primary judge, at [3], the appellant is a citizen of Fiji who applied for a protection visa on 30 November 2015. On 1 February 2016, a delegate of the Minister refused to grant the visa. The appellant applied to the Tribunal for review of that decision on 19 February 2016. She was invited to a hearing, which she attended on 14 September 2018 with her representative.
3. The single ground of appeal to this Court is in the following terms:

The Primary Judge erred in law in failing to find that the Second Respondent (the Tribunal) erred by failing to consider corroborative evidence and thus fell into jurisdictional error of the kind described in *Minister for Immigration and Citizenship v SZRKT and Another* (2012) 213 FCR 99.

**Particulars**

The Tribunal erred in failing to find that the letter of Ms Duaibe was corroborative of the fact that the legal firm for which the Appellant worked in Fiji was engaged in corrupt land dealings.

1. As found by the Tribunal in its reasons at [11]-[12], “[t]he applicant is a 42 year old woman of Fijian nationality. … She indicates that she left her country because she felt threatened and insecure due to government policies. She wants to remain in Australia because Fiji is no longer a place where human rights are respected. She states she suffered mental harm due to 24/7 surveillance because of her work as a research officer when she was asked to do certain things. She does not believe the authorities will protect her.”
2. At [39], the Tribunal said that the appellant’s claims were that she feared harm upon return to Fiji because of her knowledge about land transfers obtained while she was working at MRV Legal Consultancy, a law firm previously owned by Ms Meresini Vuniwaqa who was at the time of the Tribunal’s decision a Minister in the Fijian government. The appellant feared harm from Ms Vuniwaqa and/or her husband Mr Nemani Vuniwaqa who had been an officer in the army and at the time of the Tribunal’s decision was Director of Immigration. The appellant feared harm at the hands of the military because she feared she may be blamed as a scapegoat for unlawful land transactions if this matter were to come to light. She claimed her political views are in opposition to the Fijian Government and she was at risk of harm from them.
3. At [15], the Tribunal said:

On 29 January 2016 the delegate received an email from Hadassah Duaibe in support of the applicant’s case. The email stated the writer was a former colleague of the applicant at MRV Legal Consultancy where she worked as a junior solicitor. The owners of the firm were Ms Meresini Vuniwaqa, now Minister for Lands and Mr Nemani Vuniwaqa who was Director of Immigration. The writer states she resigned from the firm on grounds of ‘moral beliefs which may have contradicted certain transactions that she became involved in along with the applicant’. The writer states that she cannot provide further details because she remains in Fiji and there is no protection for whistle blowers.

1. The Tribunal referred again to this email at [21] and [40].
2. At [41]-[42] of its reasons, the Tribunal said:

*Claimed employment at MRV Legal Consultancy*

The applicant claims she was employed at this law firm in 2014 and 2015. The Tribunal had some doubts about the veracity of this claim, given the limited evidence provided by the applicant in support and inconsistencies in the evidence she has provided. For example, she has provided no documentary evidence such as an employment contract, business card or correspondence on letterhead before the Tribunal that substantiates her claim regarding her employment. Also, the Tribunal observes information contained in the email from Hadassah Duaibe is not consistent with what the applicant told the delegate at the interview, where she said she worked at MRV Legal after Ms Duaibe resigned, and that they did not work there at the same time. The Tribunal observes she gave different evidence to the Tribunal, stating that she and Hadassah did work there at the same time, but Hadassah left before she did. On the other hand the Tribunal notes that department file records indicate she claimed to be working as legal admin at MRV Legal Consultancy in her visitor visa application. It has also considered the evidence provided following the hearing from Linked In pages and screen shots of work related email correspondence. Having considered all of the evidence now before it, the Tribunal has decided to give the applicant the benefit of its doubts and has proceeded to consider her claims on the basis that it accepts she worked at MRV Legal Consultancy as claimed.

It also accepts her claims that Mereseini Rakuita Vuniwaqa was the previous owner of MRV Consultancy and is now a Minister of the Government. Independent information confirms that Ms Vuniwaqa has held positions of Minister for Lands & Mineral Resources and, now, Minister for Women, Children & Poverty Alleviation. The Tribunal also accepts that her husband, Mr Nemani Vuniwaqa holds the position of Director of Immigration.

However, despite the above findings, the Tribunal does not accept the applicant’s claims about the nature of the work undertaken at the firm and risk of harm to her on this basis. It found her evidence about the work she did there was vague and lacking in convincing detail. She referred to ‘preparing documents relating to land transfers’ in written statements, but was unable to provide any further convincing detail when asked to elaborate on this at the hearing. When asked who her clients were and details of her specific role, she was unable to provide detail that would support her claim that she played any significant role in this work. She referred to having Chinese clients but could not describe in any detail what land transfers she was undertaking for them. On the basis of the oral evidence she has given, and absence of any other substantiating material to support knowledge she has of specific matters, the Tribunal finds that at most her involvement in the work undertaken at the firm was of a clerical or administrative nature. Therefore, while prepared to accept that she worked at MRV Legal Consulting the Tribunal does not accept that she has information or knowledge from her work there which would bring her to the adverse attention of the authorities, or her former employer, Mrs or Mr Vuniwaqa or anyone else in Fiji. It does not accept that there is a real chance she will be blamed as a scapegoat for unlawful land transactions if any matters relating to the work that MRV was involved in came to light. There is also no evidence before the Tribunal to support a finding that any wrongdoing was taking place in the context of transactions undertaken in the firm. The Tribunal also does not accept that the applicant was monitored or under surveillance while working at the firm in the past, or that she is likely to be under surveillance for this or any reason in future.

1. The primary judge addressed, at [20]-[21], the claimed jurisdictional error on the part of the Tribunal that the Tribunal’s finding the appellant’s knowledge of land transactions would not put her at risk was contradicted by evidence from Ms Duaibe, purportedly a former colleague of the appellant at MRV Legal Consultancy, and this demonstrated a failure to address this evidence and/or proceeding on a misunderstanding of it.
2. The primary judge said:

… first, Ms Duaibe did not provide evidence regarding the applicant’s work activities, only that the applicant was employed around the same time she was employed. The Tribunal observed at [40] that Ms Duaibe’s evidence was inconsistent with the applicant’s evidence to the delegate and that the applicant commenced employment at MRV Consultancy Legal after Ms Duaibe’s resignation. Nor does Ms Duaibe’s evidence indicate the applicant was at risk of harm. Rather, her evidence was that Ms Duaibe was in a precarious position as “there is no protection for whistle blowing” and the applicant should tell her own story. As such Ms Duaibe’s evidence cannot be said to directly contradict the Tribunal’s finding and there is nothing in the decision which indicates the Tribunal misunderstood this evidence.

Secondly, while the Tribunal accepted the applicant worked at MRV Consultancy Legal, it did not accept “the applicant’s claims about the nature of the work undertaken at the firm and risk of harm to her on this basis”. As such, read fairly, the Tribunal did not accept that the firm undertook fraudulent land transactions. The Tribunal further did not accept that the applicant undertook work that would bring her to the adverse attention of the authorities or her employer. This finding was on the basis of the applicant’s vague evidence and the absence of substantiating material.

(Footnotes omitted.)

1. The email in question was summarised by the Tribunal at [15] of its reasons. It is not therefore a case where potentially corroborating material was ignored. Further, not only did the Tribunal set out the substance of the email but it also considered its contents. The fact of the email was also discussed by the Tribunal at [21] in the context of how it came to be provided to the delegate of the Minister.
2. The appellant submitted the present case was on all fours with *Minister for Immigration and Citizenship v SZRKT* [2013] FCA 317; 212 FCR 99. The appellant submitted that the fact that in *SZRKT* the tribunal never mentioned the corroborative material, as opposed to here, where the Tribunal mentioned it, and then ignored it, could not be a difference of any significance. In failing to deal with this key issue, and in failing to find that the Tribunal fell into jurisdictional error of the kind described in *SZRKT*, the primary judge erred in law, it was submitted.
3. The appellant submitted that the Tribunal needed to say something expressly about the corroborative material in the email in its reasoning at [42].
4. The appellant submitted the Tribunal accepted that the appellant worked in the firm called MRV Legal Consultancy as a conveyancing officer. That is not precisely my reading of the Tribunal’s reasons at [40], which go no further than saying that the Tribunal accepted that the appellant worked at MRV Legal Consultancy as claimed, which may mean as “legal admin”. However, what is important is that it does not constitute an acceptance of all of the appellant’s claims about her work at MRV Legal Consultancy, since that would be inconsistent with its later rejection at [42] of her claims about the nature of her work.
5. The respondent Minister submitted that the appellant’s argument is not assisted by the principles in *SZRKT* or *Minister for Immigration and Border Protection v MZYTS* [2013] FCAFC 114; 230 FCR 431. Both cases, the Minister submitted, concerned particular documents or information being inferred to have been overlooked or ignored entirely due to an absence of any reference to them, whereas in the present case the Tribunal referred to the email from Ms Duaibe in detail at [15] and [40]. Indeed, the Minister submitted, at [15] the Tribunal specifically quoted the part of the email said to corroborate the appellant’s claims. The Minister submitted that the Tribunal’s reasons revealed a thorough understanding of the email and a comparison of it against other evidence before the Tribunal. The Minister also submitted that the Tribunal discussed the email at [21] of its reasons.
6. The Minister submitted that the appellant’s contention was more specifically directed to the Tribunal’s rejection of the appellant’s claims as to the nature of the work she was undertaking at MRV Legal Consultancy. However, the Minister submitted that Ms Duaibe’s email did not corroborate the appellant’s claimed work activities; as the primary judge accepted, having regard to its contents the email could not be said to directly contradict the Tribunal’s findings, which were made on the basis of the appellant’s somewhat vague and general evidence and absence of substantiating material.
7. In my opinion, the real point concerned the work that the appellant was doing at MRV Legal Consultancy. The Tribunal set out, at [17], the work that the appellant claimed that she was doing, that is, preparing documents relating to land transfers which she knew to be inaccurate and which she claimed she was forced to prepare because she feared if she did not that she would be subject to threats and torture, as the husband of the principal of the firm had much influence in the army. The Tribunal also referred to the appellant’s claimed suspicion that land was being assigned to the Land Bank under the Land Use Decree, and could then be distributed by the Prime Minister as he saw fit. She claimed that she feared return to Fiji due to her knowledge of the land transfers.
8. It was these claims that, in substance, the Tribunal rejected at [42]. It found the appellant’s evidence vague and lacking in convincing detail, and recorded that the appellant was unable to provide any further convincing detail in relation to her claim that she had been “preparing documents relating to land transfers”. The Tribunal found that the appellant was unable to provide detail about who the clients were and details of her specific role that would support her claim that she played any significant role in this work. It further found that she could not describe in any detail what transfers she was undertaking for the Chinese clients she had claimed to have had. In similar vein, the Tribunal found at [42] that there was also no evidence before the Tribunal to support a finding that any wrongdoing was taking place in the context of transactions undertaken in the firm.
9. The effect of this reasoning is that, in my opinion, the Tribunal implicitly found that the general statement in the email from Ms Duaibe did not amount to other substantiating material to support the claim that the applicant had knowledge of specific matters. What the Tribunal found was that the appellant’s non-specific or vague evidence, which lacked detail about the nature of the work as claimed, was not corroborated by the general reference in Ms Duaibe’s email to Ms Duaibe resigning from the firm “for moral beliefs which may have contradicted certain transactions that I became involved in along with my colleague [the appellant]”.
10. In my opinion, the Tribunal’s reference at [42] to there being an absence of substantiating material and to no evidence means that the Tribunal discounted but did not ignore the contents of Ms Duaibe’s email. The reference to “no evidence” should not be construed to mean no material at all but to mean nothing of specificity or substance.
11. There was no jurisdictional error in so proceeding. I do not accept the submission on behalf of the appellant that the Tribunal “totally failed to deal with” the claimed corroborative email or did not engage with it.
12. *Minister for Immigration and Citizenship v SZNSP* [2010] FCAFC 50; 184 FCR 485 explains, at [37]-[38], the decision in *Re Minister for Immigration and Multicultural Affairs; Ex parte* *Applicant S20/2002* [2003] HCA 30; 198 ALR 59 as follows:

The case establishes that the RRT does not act irrationally, and thereby fall into jurisdictional error, by first making an assessment of the applicant’s credit and then giving attention to the corroborative evidence.

The RRT would fall into jurisdictional error if, after making an adverse credibility finding, it simply refused to consider the corroborative evidence. *Applicant S20/2002* 77 ALJR 1165; 198 ALR 59 does not sanction a practice of disregarding corroborative evidence. It still requires that the corroborative evidence be assessed and weighed in the balance with all the other evidence.

In my opinion, what the Tribunal did was within these principles.

1. I note that the appellant accepted that the Tribunal referred to the email expressly at [15], [21] and [40] of its reasons. The Tribunal accepted part of what the email was tendered to support, that is, that the appellant worked at MRV Legal Consultancy. As I have indicated, in my opinion the Tribunal also dealt with the substance of that email at [41] and [42] of its reasons.
2. In my opinion, therefore, the Tribunal did engage with Ms Duaibe’s email and its contents. No doubt the Tribunal could have said something expressly about the email in its reasoning in [42] but I consider it is clear that the Tribunal, being aware of the email and its contents, dealt with its substance.
3. I do not accept the contention on behalf of the appellant that the Tribunal erred in failing to find that Ms Duaibe’s email was corroborative of the fact that the legal firm for which the appellant worked in Fiji was engaged in corrupt land dealings. The analysis I prefer is not that, as submitted by the Minister and found by the primary judge at [20], Ms Duaibe did not provide evidence regarding the appellant’s work activities, but rather that the evidence Ms Duaibe did provide about the appellant’s work activities was found by the Tribunal not to affect the conclusions it had reached by considering the appellant’s own evidence. In substance, the Tribunal considered the email, and formed the view that because of its generality it did not displace or qualify the conclusions the Tribunal had reached by its consideration the appellant’s evidence, which it found to be non-specific or vague and lacking in detail, as to the nature of her work at the firm.
4. For completeness, I do not accept the appellant’s submission that in the third sentence of [40] the Tribunal ignored Ms Duaibe’s email. The Tribunal was dealing in that sentence with formal material as to the appellant’s employment. The Tribunal then went on in the next sentence to refer specifically to the contents of the email.
5. For these reasons, although I would not adopt the entirety of the reasoning of the learned primary judge at [20], in my opinion there was no error in his Honour’s conclusion and I would therefore dismiss the appeal, with costs.

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| I certify that the preceding twenty seven (27) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Robertson. |

Associate:

Dated: 6 August 2019