

RRT Bulletin

The Refugee Review Tribunal decisions digest

This bulletin covers recently published Tribunal decisions. The decisions summarised represent a cross-section of published decisions of the Tribunal. Selected summaries of High Court, Federal Court and Federal Magistrates Court judgments, of interest to the Tribunal, are also included.

The Refugee Review Tribunal shall not be liable for any reliance by any person on the summaries contained in this Bulletin. Each summary provides a guide only to each decision and should not, under any circumstance, be used as a substitute for the full text of a decision.

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REFUGEE REVIEW TRIBUNAL DECISIONS

Bangladesh

060751121

6 December 2006, Sydney

Mr G Short, Senior Member

BANGLADESH - POLITICAL OPINION - AWAMI LEAGUE - FALSE CHARGES - The applicant feared persecution because he had been an office holder in the Awami League and had worked helping candidates during electoral campaigns. He claimed he was arrested, tortured and falsely charged by the police and had been fired upon by rival political "BNP cadres". The applicant claimed that in looking for him, groups had beaten his wife and that a group had tied him up and killed his friend. He had heard that the Bangladesh Nationalist Party (BNP) had given his name to the Rapid Action Battalion, which he said "kills people in the name of cross fire", and that he had to leave the country. The applicant claimed he paid a bribe to get a passport and left Bangladesh a few months later to save his life. He returned and departed several times and in one case returned almost immediately. The applicant claimed that he had paid police at various times to remove charges against him, which he claimed were falsely made against him and that at various times he thought, and was advised that he could, return home and live with his family. He claimed that it was a difficult choice for him to leave the country as it was election time, the BNP did not want any Awami League activists to remain in Bangladesh and BNP supporters were putting pressure on his family.

Held: Decision under review set aside.

The Tribunal found aspects of the applicant's evidence difficult to accept and to cast doubt on his claims. It found there was a considerable element of exaggeration in his claims regarding problems as a result of his involvement in politics. However, the Tribunal accepted the applicant's account of his involvement in the Awami League, particularly his involvement in election campaigns in his local electorate over a number of years. The Tribunal referred to independent information that the Government had misused its powers to persecute opposition activists. It found there was a real chance that even someone with a relatively low level of involvement in the Awami League, like the applicant, may face persecution for reasons of their political opinion in Bangladesh. The Tribunal found there was a real chance that in the current political climate, the applicant could suffer persecution if he returned and resumed his involvement in the Awami League (and accepted he would do so). Since the Government was responsible for the persecution which the applicant feared, the Tribunal found that he could not reasonably be expected to relocate within Bangladesh. Accordingly, the Tribunal found the applicant had a well-founded fear of being persecuted for reasons of his political opinion if he returned.

060748724

7 December 2006, Sydney

Mr S Roushan, Member

BANGLADESH - POLITICAL OPINION - AWAMI LEAGUE - THREATS - RELOCATION - The applicant feared persecution arising from his active involvement in student politics. He claimed to be a member of the Bangladesh Chatra League (BCL) which was the student wing of the Awami League. The applicant claimed to have supported the local candidate in Dhaka during the elections by plastering posters and participating in meetings and demonstrations. He claimed he had spoken against a Bangladesh Nationalist Party (BNP) candidate during a procession and since then had been subjected to threats and attacks by BNP supporters. The applicant claimed that the BNP supporters looked for him at his place of residence on different occasions and when they could not find him, they damaged his property and made threats against him. He also claimed that when he returned to Bangladesh after some time, his friends advised him to leave as the BNP supporters had seen him and were looking for him. The applicant claimed that he could not relocate to a different part of Bangladesh because it would be difficult for him to find a job.

Held: Decision under review affirmed.

The Tribunal accepted that the applicant was an active member of the BCL. On the basis of his description of his political activities, the limited geographical scope of his activities and his limited knowledge about the party, it found that the applicant was engaged in low level, localised political activities and did not have a significant political profile. The Tribunal accepted that the applicant's place of residence was attacked on a number of occasions by BNP supporters but found that the damage was limited. It was not satisfied that the attacks on his place of residence amounted to persecution. Further, the Tribunal was not satisfied that the threats that BNP supporters made against the applicant when he returned to Bangladesh were serious enough to amount to persecution. Having regard to independent information and the level of the applicant's education and skills, the Tribunal was not satisfied that it would be unreasonable for him to relocate within Bangladesh. Accordingly, it was not satisfied that the applicant's fear of persecution for reasons of political opinion was well-founded.

China

060897314

27 November 2006, Sydney

Ms K Raif, Member

CHINA - RELIGION - FALUN GONG PRACTITIONER - The applicant feared persecution on the basis of his practice of Falun Gong. He claimed that he had practised Falun Gong for several years to improve his health. The applicant claimed police had suspected him of being a practitioner and that he was on a watch list and could be detained. He also claimed that he practised Falun Gong privately, did not participate in any public activities and did not discuss Falun Gong with anyone because he was fearful of his safety. The applicant further claimed that he continued to practise Falun Gong and also attended study groups after he arrived in Australia. He claimed that he participated in all Falun Gong activities, including large meetings and marches. The applicant claimed that there were no human rights in China and no freedom of belief. However, he claimed that Falun Gong was now his life belief and if he returned he would continue to practise and to tell the truth.

Held: Decision under review set aside.

The Tribunal accepted that the applicant was a genuine Falun Gong practitioner and a credible witness. It accepted that he did not participate in any public activities and did not discuss Falun Gong with anyone because he was fearful for his safety. Although the Tribunal could not be satisfied that the applicant came to the attention of the authorities in China because of his Falun Gong practice, it noted that he provided detailed evidence of the exercises and demonstrated his knowledge of Falun Gong. The Tribunal accepted that the applicant had engaged in Falun Gong activities in Australia because he considered them to be intrinsic to his beliefs and would wish to continue if he returned. It found there was a real chance that he would suffer serious harm and was accordingly satisfied that he had a well-founded fear of persecution based on his religion.

060769439

12 December 2006, Sydney

Ms A MacDonald, Senior Member

CHINA - POLITICAL OPINION - UNION ACTIVITY - THREATS - DETENTION - The applicant feared persecution arising from his role in union protests attempting to obtain money owed by a bankrupt company to its former employees. He claimed that he and other protestors were attacked by men employed by the factory before he was arrested and detained by police for several days, for causing a disturbance in a public place. The applicant claimed that after lodging a lawsuit, which they lost, the protestors were arrested, told the authorities were angry with them for bringing the action, and transferred to a detention centre. He claimed he was sentenced to labour reform and that after he was released the police visited him several times and threatened his family, if he were to continue with his protest. Though a forthright person who believed in his rights, the applicant claimed he was fearful for his family's safety, and went abroad at their suggestion.

Held: Decision under review set aside.

The Tribunal accepted that the applicant was arrested when he sought assistance from the police after he and his fellow employees were attacked. It accepted that he was subsequently detained as a result of his unsuccessful legal action, which appeared to have been regarded by the Chinese authorities as involving the

expression of a political opinion against the Government. In the Tribunal's view, where a person was actively involved in union activity, particularly where it might expose the corrupt actions of local officials, there was a real possibility that those matters could be viewed as directed against the interests of the state such that politically related persecution might result. This would give rise to a political opinion, being an opinion against the interests of the state apparatus, being imputed to such an activist. Accordingly, the Tribunal found that the applicant's fear of serious harm arising from an imputed political opinion was well-founded.

060819216

22 December 2006, Sydney

Mr R Derewlany, Member

CHINA - POLITICAL OPINION - PROTEST ACTIVITY - LAND ACQUISITION - The applicant feared persecution because of an imputed anti-government political opinion based on her protest against the government's land acquisition in her village. She claimed to have organised fellow farmers to lodge local government appeals regarding land acquisition and to have protested with farmers at a ceremony where senior government officials and the media were present. The applicant claimed the protest was suppressed by armed police and that she was arrested with other farmers. While most of the farmers were released after a short time, the applicant was sent to undertake hard manual labour until her husband bribed officials to secure her release some months later. The applicant claimed that the authorities considered her to be a leader of the protest activities as she had always been present when petitions were delivered to government offices. She claimed that on her release she continued to be threatened and interrogated by police and local officials due to her perceived anti-government ideologies and record of organising protests. The applicant claimed that as a consequence she became depressed and attempted suicide and her husband arranged for her to leave China.

Held: Decision under review set aside.

The Tribunal was satisfied that the applicant was involved in a public protest at an official gathering in her village and accepted the evidence of her detention, forced labour and treatment by the authorities after her release. It accepted that although she was one of a group of farmers involved in protesting to the authorities, it was possible she was perceived as an organiser given her regular attendance at government offices, and was therefore singled out for further detention and harsh treatment. The Tribunal accepted that the applicant's detention in China, the harsh conditions during detention and the fact she was forced to undertake hard manual labour, as well as the surveillance and interrogations she was subject to after being released, constituted persecution. The Tribunal accepted that the reason for the harm was the applicant's imputed political opinion as a person who protested against land acquisition by the authorities and was perceived as being a protest organizer and therefore anti-government. The Tribunal was further satisfied there was a real chance that the applicant would continue to be perceived as anti-government and would consequently be placed under surveillance and subjected to intimidation and interrogation. Accordingly, it found that she had a well-founded fear of being persecuted for reasons of an imputed political opinion if she returned.



Indonesia

060793741

11 January 2007, Sydney

Mr R Derewlany, Member

INDONESIA - POLITICAL OPINION - GERAKAN ACEH MERDEKA - ACEH REFERENDUM INFORMATION CENTRE - The applicant feared persecution arising from his support of Gerakan Aceh Merdeka (GAM), or the Free Aceh Movement. He claimed that he also joined the Aceh Referendum Information Centre (SIRA) which was working on independence for Aceh. The applicant claimed he became a sponsor and donated money, goods and services. He claimed that the Indonesian military came to his business premises, pointed a gun at his head and abused him before taking him to military headquarters for interrogation and detention. The applicant claimed that one of his relatives who was also a member of GAM was taken from his house and shot dead by the military. He claimed that as the military had suspicions he still supported GAM they searched for him and when they found a GAM flag at his business they burnt the premises down and shot dead an employee. He claimed he was out of Aceh at the time and had not returned. The applicant claimed he did not accept the conditions agreed to by others that Aceh would forego the right

to independence and that he would continue to advocate independence. He feared he would be arrested, tortured and possibly killed if he returned.

Held: Decision under review set aside.

The Tribunal was satisfied that the applicant had been a supporter of GAM and was actively involved with SIRA. It accepted that he had been detained and interrogated and that one of his relatives was killed by the military. The Tribunal also accepted that the applicant's business was burnt down by the military and that a member of his staff was killed. It accepted that the military had a political motivation arising from a perception that he supported and was involved in GAM. The Tribunal was satisfied that the applicant's detention and interrogation by the military and the destruction of his business constituted persecution for reason of his political opinion as a supporter of GAM. It accepted that the applicant would continue to advocate independence if he returned and that he would do so in a manner which would attract the attention of the authorities. The Tribunal was satisfied there was a real chance that the applicant would suffer persecution because of his political opinion and accordingly his fear was well-founded.

Iran

060911712
20 December 2006, Sydney
Ms A O'Toole, Member

IRAN - RELIGION - EVANGELICAL CHRISTIAN - The applicant feared persecution for reasons of his religion. He claimed he had attended meetings and distributed leaflets for a left wing political organisation and that many leaders were arrested and some were killed. The applicant claimed he realised Islam was not the answer for him as he had witnessed atrocities committed by the Islamic government. He became interested in Christianity and started attending the Assembly of God Church in Tehran. The applicant claimed he was detained by security agents who threatened and verbally abused him because of his religion. He agreed to act as an informer for the authorities, who told him if he failed to do so he would never see his family again. The applicant also claimed his brother departed Iran because of a fear of persecution relating to his own religious beliefs. He claimed he had been baptised in Australia, where he continued to practise his Christian faith.

Held: Decision under review set aside.

The Tribunal was satisfied that the applicant had a well-founded fear of persecution for reasons of his religion. It accepted that the applicant became interested in Christianity prior to leaving Iran; that his brother departed Iran because of a fear of persecution relating to his own religious beliefs; that the applicant had been involved in the practise of evangelical Christianity since his arrival in Australia and was subsequently baptised. The Tribunal referred to independent information and accepted that evangelical Christians suffered persecution at the hands of the Iranian authorities. It was satisfied that the applicant would continue to practise his faith on return and there was more than a remote possibility he may come to the adverse attention of the authorities. The Tribunal was satisfied the applicant could be detained, interrogated and seriously harmed because of his religious beliefs and that he had a well-founded fear of persecution.

Kyrgyzstan

060781033
9 January 2007, Melbourne
Mr A Gentile, Member

KYRGYZSTAN - RACE - ETHNIC MINORITY - VIOLENCE - DISCRIMINATION - The applicant feared persecution as a member of an ethnic minority. He claimed he was of mixed ethnic-Kyrgyz background and had always been subject to abuse and humiliation because of his ethnic family name and non-Kyrgyz appearance. The applicant claimed that after the so called "revolution" in Kyrgyzstan the life of Russians, Uigurs, Jews and all other non-Kyrgyz ethnic minorities became unbearable. He claimed he was beaten near his home by a group of Kyrgyzs who told him to leave the country. After that he never left home after dark. The

applicant claimed that at the local market he was assaulted by Kyrgyzs while security officers and police who were present paid no attention. He also claimed that a group who had previously beaten him attacked him again and threw him off the bus. The applicant claimed the country had lost sight of normal understanding of law and justice and that no state protection was afforded to people like him.

Held: Decision under review set aside.

The Tribunal accepted that the applicant was from an ethnic minority and accepted his claims including that he was attacked a number of times. It noted that he did not seek the intervention of the security forces because he was sure that nothing would be done about his complaints. The Tribunal found, based on the applicant's own experiences as well as the independent information, it could not be said that in the circumstances protection would reasonably have been forthcoming had the applicant sought it. The Tribunal accepted that the security apparatus was corrupt and unreliable in terms of carrying out its duties without fear or favour. It found there was no evidence that any changes had been fully implemented or had resulted in substantive changes in the culture of the security forces. The Tribunal found that adequate state protection was not available to the applicant and accordingly his fear of persecution was well-founded.

Lebanon

060931294

21 December 2006, Sydney

Mr A Jacovides, Member

LEBANON - PARTICULAR SOCIAL GROUP - HOMOSEXUAL - HARASSMENT - VIOLENCE - The applicant feared persecution as a homosexual who wished to live openly as a gay man. He claimed that he was frequently harassed and sometimes assaulted by persons who assumed he was homosexual. The applicant claimed that he had two relationships with males in Lebanon which were conducted in secret because he feared retribution from family and society. He claimed that homosexuality was viewed by conservative Sunni Muslims as a sin punishable by death. The applicant claimed that while performing his military service he was beaten, harassed and otherwise mistreated by his peers and superior officers on suspicion of being homosexual. The applicant claimed he was forced to conceal his sexual orientation to avoid further harm. He claimed he could not rely on the authorities for protection because "the police conduct a campaign of rounding up suspected homosexuals".

Held: Decision under review set aside.

The Tribunal was satisfied that the applicant had provided a truthful account of his circumstances. It accepted that he had suffered harassment and other forms of harm because he was suspected of being homosexual. The Tribunal noted independent evidence confirmed that known homosexuals were harassed and subjected to physical violence by the authorities and the community. It also noted that the police and the military had been implicated in attacks against homosexuals and that homosexuals could not rely on them for protection. The Tribunal was satisfied that the laws relating to "unnatural acts" were used to target homosexuals. It found that the practical application of those laws, which included imprisonment, amounted to persecution. The Tribunal was satisfied that if the applicant lived openly as a homosexual in Lebanon he would suffer persecution as a member of a particular social group, being homosexuals. Accordingly, it found that his fear of persecution was well-founded.

Sri Lanka

060872826

29 December 2006, Melbourne

Ms W Boddison, Member

SRI LANKA - RACE - TAMIL - POLITICAL OPINION - LIBERATION TIGERS OF TAMIL EELAM - The applicant feared persecution from the Sri Lankan Army as a Tamil woman who had been imputed with an opinion of supporting or having associations with the Liberation Tigers of Tamil Eelam (LTTE). The applicant,

who was from Jaffna, had been displaced many times due to the military actions of the warring parties. She claimed that when she returned to Jaffna she found the army had established a camp in close proximity to her home. The applicant claimed that the soldiers regularly harassed her. They also harassed one of her children who resided with her for a short period of time. Another of the applicant's children gave evidence that some of his siblings residing in another country had been accused of having connections with the LTTE and that one who remained in Sri Lanka continued to be an active member.

Held: Decision under review set aside.

The Tribunal accepted the applicant's account of the difficulties she had faced over the years. In particular, it accepted that she and her child had lived in Jaffna where there was an army camp nearby and that they were harassed by soldiers. While the Tribunal found the evidence of the witness to be exaggerated in some respects it accepted that a number of the applicant's children were residing in another country and that at least one of them was accused of having LTTE connections. Referring to independent information, the Tribunal found that it was not a remote or far fetched possibility that the applicant could be questioned and ill-treated for reason of being a Tamil woman from Jaffna whose family members had associations with the LTTE. It also accepted that she herself could be accused of such associations. The Tribunal was satisfied that this would amount to serious harm for reasons of the applicant's ethnicity and imputed political opinion. Accordingly, the Tribunal was satisfied that the applicant's fear of persecution was well-founded.



Uzbekistan

060828736

20 December 2006, Sydney

Ms A Younes, Member

UZBEKISTAN - RELIGION - JEHOVAH'S WITNESS - VIOLENCE - The applicant feared persecution on account of his religious belief. He claimed he had converted to the Jehovah's Witness faith but never openly propagated his religion within a majority Muslim population. The applicant claimed to have been beaten and humiliated by law enforcement authorities who also refused to protect him from harmful acts committed by others. He claimed that his property was damaged, his house searched and his religious literature seized and desecrated. He claimed that his attempts to complain to higher officials led to further acts of violence by police. The applicant claimed that his family also suffered physical and emotional ill-treatment such as beatings inflicted on his children by teenagers who called them sectarian Kaffirs.

Held: Decision under review set aside.

The Tribunal found that the applicant was genuine and, notwithstanding minor inconsistencies in his evidence, had provided detailed accounts and persuasive explanations. Although demonstrating limited understanding of the Jehovah's Witness faith, the Tribunal found that he was not claiming more than average knowledge acquired through a different language. The applicant's claims were also consistent with independent information that Uzbekistan limited religious freedom including reports of Jehovah's Witnesses being detained, religious material confiscated and several instances of police brutality. The Tribunal accepted the applicant's claims as plausible and found that he had a well-founded fear of persecution if he returned.

060828163

29 December 2006, Sydney

Ms A Younes, Member

UZBEKISTAN - RELIGION - WAHHABI MUSLIM - POLITICAL OPINION - The applicant feared persecution in Uzbekistan because he had become involved in Islam and had met with like-minded people at private gatherings. He claimed that after attending several gatherings he began learning about Wahhabi and was given tapes with prayers and booklets to be distributed to those he trusted. The applicant claimed that following news that the leader and four other members of the circle had been arrested, he was arrested and his house searched. He claimed he was detained and interrogated for several weeks. The applicant stated that he was forced to sign confessions and tape oral confessions and was tortured despite having confessed. He claimed he was released when he required an urgent operation following a beating. The applicant claimed that later he was summonsed again, threatened and detained for one day. He claimed that he was accused of being involved

in anti-regime activities and that he promised to spy on people so that he would be released. The applicant was afraid he might be perceived as an Islamic fundamentalist and detained and charged if he returned.

Held: Decision under review set aside.

The Tribunal noted that the applicant's claims indicated a limited knowledge of Islam and in particular Wahhabism. However, it found that his level of knowledge was commensurate with his claims of being a moderate Muslim and accepted that his knowledge may have been limited because the country limited religious freedom and the publication and circulation of religious material. The Tribunal accepted as plausible that the applicant had been detained on two occasions and seriously ill-treated by the authorities. It also accepted as plausible that he had been asked to spy on others. The Tribunal found that if the applicant were to return to Uzbekistan, there would be a real chance that he would suffer serious harm for reasons of his religion and imputed anti-regime political opinions. Accordingly, given his past treatment, the Tribunal was satisfied that the applicant had a well-founded fear of persecution.

FEDERAL COURT JUDGMENTS

SZCOQ v MIMA

[2007] FCAFC 9

Federal Court of Australia, Moore, Besanko, Buchanan JJ, NSD 523 of 2006, 9 February 2007

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that the appellant was not a person to whom Australia had protection obligations.

The appellant claimed to fear persecution in Bangladesh on the basis of his religious beliefs as a Buddhist and his actual or imputed political opinion. The appellant provided the Tribunal with various documents in support of his claims including a charge sheet. The informant was identified on the charge sheet as a prominent parliamentarian and adviser to the Prime Minister. The charge sheet indicated that the appellant had thrown hand bombs causing injury to the informant and others at a BNP meeting; that the incident occurred “due to political rivalry and political grudge”; and that the appellant was involved in many “anti-Government activities”.

The Tribunal did not accept that the appellant was a target of political violence. The Tribunal decision included the following statement: “...*The Tribunal accepts as plausible the applicant’s claim that a charge was laid against him... but has no information to support the applicant’s claim that this charge was politically motivated and does not accept that this is the case.*”

On appeal, the appellant claimed that the Tribunal failed to have regard to the contents of the charge sheet and such failure constituted jurisdictional error.

Held: *per Moore and Besanko JJ (Buchanan J dissenting) appeal dismissed.*

per Moore J (Besanko J agreeing):

- (i) Giving the Tribunal’s reasons for decision a beneficial construction consistent with the approach demanded by the High Court in *Wu Shan Liang* the Tribunal did not fail to have regard to the charge sheet.
- (ii) Although a less beneficial construction may be possible, what the Tribunal may have meant was that while it acknowledged the existence of the charge sheet and what it contained, there was no material (putting aside the charge sheet) which indicated that what had motivated the informant who had laid the charges was the appellant’s actual or imputed political opinion.

per Besanko J:

- (iii) In a case where a matter is mentioned by a decision-maker, the Court’s assessment of the nature and quality of the decision-maker’s reasons and of the importance of the particular consideration or matter in the context of the case, may nevertheless lead the Court to conclude that the decision-maker has not given the matter genuine consideration and therefore has failed to have regard to it.

per Buchanan J (dissenting):

- (iv) The Tribunal simply dismissed the charge sheet material as irrelevant and did not take it into account or have any real regard to it. On the assumption made by the Tribunal, that it was plausible that charges were laid against the appellant as reflected in the charge sheet, it cannot be said that consideration of this material, and the proper inferences to be drawn from it, were without any relevance to its deliberations. Accordingly jurisdictional error is established.
- (v) By accepting that it was plausible that charges had been laid, the Tribunal came under an obligation to attempt to resolve the questions which arose from the charge sheet material. Some discussion of the accusations and their significance, if any, for the Tribunal’s conclusions was to be expected. It was not enough, in the circumstances, to simply say the material did not add anything to the appellant’s claims.

**SZIME v MIAC
[2007] FCAFC 10**

Federal Court of Australia, Allsop, Lander, Middleton JJ, NSD1755 of 2006, 13 February 2007

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a Refugee Review Tribunal (the Tribunal) decision that the appellant, a Nepali national, was not a person to whom Australia had protection obligations.

The issue before the court was whether the Federal Magistrate had erred in concluding that the Tribunal did not breach s.429 of the *Migration Act 1958* (the Act), which states that “[t]he hearing of an application for review by the Tribunal must be in private”. An interpreter was present at the Tribunal hearing and had taken an oath of confidentiality. During the hearing the appellant’s migration agent had raised a number of difficulties with the interpreting and the interpreter had said that she did not feel well, did not have much experience and that the applicant might need a better interpreter. The Tribunal adjourned the hearing and resumed with a new interpreter, but invited the first interpreter to remain as an observer, to help her familiarise herself with Tribunal proceedings. No consent was sought; however, neither the appellant nor his agent objected, and the agent had displayed no hesitation in speaking in his client’s interests up to that point.

The appellant submitted that the hearing was not in private. It was submitted that the presence of the first interpreter was akin to the presence of any member of the public, that her presence was not necessary for the performance of the Tribunal’s functions, was not desired by the appellant and was not of any advantage to him.

Held: Appeal dismissed.

- (i) The interpreter was not to be taken as a member of the public and the hearing was “in private” for the purposes of s.429 of the Act.
- (ii) The question as to whether persons present at a Tribunal hearing deny the quality of privacy of the hearing will be a question of fact in each case recognising that the phrase “in private” is an ordinary English expression and that the purpose of s.429 is to protect the applicant in the respects identified by the High Court in *SZAYW v MIMIA* (2006) ALR 423. That is, that an applicant may make allegations that could expose the applicant to a risk of reprisals if they were made public, and applicants should feel uninhibited in presenting their cases to the Tribunal.
- (iii) The first interpreter was not a stranger. Whilst her role had ceased, she remained clearly bound by the oath of confidence. The hearing was not open to the public. The purpose of the interpreter remaining as identified by the Tribunal was one reasonably required in connection with the Tribunal’s functions generally. It is plainly in the interests of the due administration of the Tribunal’s function that there be competent interpreters available to it. The opportunity for some further exposure to the processes of the Tribunal and its procedures was a legitimate connection with the performance of the Tribunal’s functions.
- (iv) Whilst a request for consent would have been both appropriate and courteous, a lack of such request did not convert the first interpreter into a stranger or interloper.
- (v) Having regard to the purpose of s.429 of the Act as identified by the High Court, the functions of the Tribunal, how the interpreter came to be there, the events that happened and the expressed reason for retaining the presence of the first interpreter, the interpreter was not to be taken as a member of the public and the hearing was “in private”.

**SZIFI v MIMIA
[2007] FCA 63**

Federal Court of Australia, Greenwood J, NSD 1670 of 2006, 7 February 2007

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that the appellant was not a person to whom Australia had protection obligations.

The appellant, a national of Pakistan, claimed to fear persecution for the political opinion he held and articulated concerning the need for restoration of democracy in Pakistan. The Tribunal invited the appellant to

a hearing and the appellant advised that he did not wish to attend a hearing. As there were insufficient particulars provided by the appellant, the Tribunal was unable to be satisfied of the appellant's claims. In the "Claims and Evidence" section of the Decision Record, the Tribunal correctly noted that the appellant was a national of Pakistan. However, it subsequently made two errors in relation to the appellant's nationality and the country which he had to return to. Firstly, at the commencement of the "Findings and Reasons" section of the Decision Record, the Tribunal stated that, "The applicant has claimed, and I accept, that he is a national of Indonesia." Secondly, it concluded that, "the Tribunal is not satisfied on the evidence before it that the applicant faces a real chance of persecution should he return to the PRC."

On appeal to the Federal Court, the appellant contended that the reference to the appellant as a citizen of Indonesia and the rejection of the appellant's claim of a well-founded fear of persecution had led to a grave miscarriage of justice and the Tribunal's errors were jurisdictional errors.

Held: Appeal allowed. Tribunal decision quashed and remitted for reconsideration.

- (i) The errors of the Tribunal constituted jurisdictional errors and the decision of the Tribunal was a nullity.
- (ii) Notwithstanding that the Tribunal had in its decision record reflected an analysis of the claims made by the appellant, the erroneous references to Indonesian nationality and the source of nation state conduct or nation state tolerance of conduct by others giving rise to a claim of well-founded fear of persecution affected the exercise of the Tribunal's power. The errors are neither merely typographical errors nor errors of fact at the margin of the Tribunal's review, the errors were recited by the Tribunal as material matters for the purposes of s.430(1) of the *Migration Act* 1958 (the Act).
- (iii) The Tribunal failed to afford the appellant the fairness required by s.420(1) of the Act and failed to act according to natural justice and the merits of the appellant's case as required by s.420(2). Errors which misdescribe an applicant as an Indonesian and reach conclusionary observations that the Tribunal cannot be satisfied that the applicant holds a well-founded fear of persecution should he return to a country which is identified as other than the country of nationality, suggest that the deliberative process going to the merits of the appellant's case was infused with notions which are erroneous and thus irrelevant to the appellant's case and suggest that the Tribunal member may have had in mind facts, circumstances and considerations referable to other cases.

NBKE v MIAC & Anor

[2007] FCA 126

Federal Court of Australia, Siopis J, NSD 1234 of 2006, 15 February 2007

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that the appellant was not a person to whom Australia had protection obligations.

The Tribunal found that the appellant made claims in relation to her treatment by the Chinese authorities as a member of the "Shouters". However, the Tribunal ultimately assessed her claims in relation to Indonesia as the appellant held a valid Indonesian passport. The Tribunal found this despite accepting the appellant's claims that this passport had been obtained by a people smuggler on the basis of a bogus marriage by her to an Indonesian national.

The Federal Magistrate found that the Tribunal had considered the information provided by the appellant and had made a decision open to the Tribunal to make.

The appellant argued that the Federal Magistrate had erred by failing to find that the Tribunal did not address the claim that although she had entered Australia on the Indonesian passport, it had been obtained falsely by a third party and she should not be treated as an Indonesian national but as a Chinese national.

Held: Appeal allowed. Tribunal decision set aside and remitted for reconsideration.

- (i) The Tribunal acted on the evidence of the passport at face value. It acknowledged, but did not deal with the appellant's claim that the passport was obtained through a bogus marriage, and she had not

acquired Indonesian nationality, nor lost Chinese nationality, and hence the passport contained inaccurate information insofar as it stated that the appellant was an Indonesian.

- (ii) The appellant's claim went to a basal element of a claim for protection, and there was, as the Tribunal acknowledged, cogent evidence to support her claim. The failure to deal with the claim amounted to a constructive failure by the Tribunal to carry out the review function, leading to jurisdictional error.
- (iii) The Tribunal did not consider whether this was an occasion when it should exercise its powers of inquiry under s.427(1)(d) of the *Migration Act 1958* to ascertain from the Indonesian authorities whether in the appellant's circumstances she would be entitled to Indonesian nationality, and whether she would qualify for protection by the Indonesian state.

SZHWHY v MIMA & Anor
[2006] FMCA 1417

Federal Magistrates Court of Australia, Scarlett FM, SYG3740 of 2005, 27 September 2006

The applicant, a national of Egypt, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations. The applicant claimed that he had a well-founded fear of persecution because of his homosexuality and his conversion from the Islamic faith to Christianity.

The Tribunal did not accept the applicant as a witness of truth. During the hearing, the Tribunal had questioned the applicant about his consultation with a solicitor. The applicant had told the Tribunal that the solicitor was a Muslim so he was “too afraid to speak in front of him about the Christianity and the homosexuality as well”. The Tribunal had asked further questions including what the applicant had spoken to the solicitor about and what the solicitor’s advice was. The applicant stated that the solicitor had recommended another meeting but that he had not gone back to the solicitor.

The applicant sought to rely on a failure to accord procedural fairness by breaching the applicant’s legal professional privilege in relation to the consultation with a solicitor.

Additionally, the applicant claimed a breach of s.424A of the *Migration Act* 1958 (the Act) in relation to two documents. The first document was a transcript of a telephone conversation between the applicant and his sister on 25 January 2005 and the second was an advertisement in an Egyptian newspaper in January 2005. Both documents were claimed to have been given for the purposes of the protection visa application and did not fall within the s.424A(3) exceptions.

Held: Application dismissed.

- (i) Whilst the conversation between the applicant and the solicitor was privileged, there was no jurisdictional error on the part of the Tribunal. The applicant would have been entitled not to answer questions about that conversation and rely on legal professional privilege. This is so even though the Tribunal is not bound by the rules of evidence as provided in s.420(2) of the Act.
- (ii) Neither s.424 nor s.427 of the Act allows the Tribunal to do away with an applicant’s right to refuse to disclose the contents of communications with his or her legal adviser. It is important that an applicant should be made aware that there is such a right of legal professional privilege. In this case, the migration agent who had accompanied the applicant should have warned him of his right not to disclose the contents of his conversation with the solicitor.
- (iii) The Tribunal had not failed to comply with s.424A in respect of the transcript of the telephone conversation. The document had been given to the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) in support of the protection visa application. However, as the applicant’s migration adviser had made a submission to the Tribunal which had specifically drawn the Tribunal’s attention to the transcript, the information was given by the applicant to the Tribunal for the purpose of the review application.
- (iv) Nor had the Tribunal failed to comply with s.424A of the Act in relation to the advertisement in the missing persons column of an Egyptian newspaper which had been submitted to DIMIA. The Tribunal had asked the applicant about the date of the newspaper advertisement and some other questions as well as having the interpreter translate the document to be placed on the Tribunal file. As the applicant had continued to advance the advertisement as a document supporting his claims at the Tribunal hearing then at that stage, the advertisement had come to be a document containing information given by the applicant for the purpose of the application.

SZGUP v MIMA & Anor
[2006] FMCA 1130

Federal Magistrates Court of Australia, Driver FM, SYG3848 of 2005, 29 September 2006

The applicant, a national of Bangladesh, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia has protection obligations. The applicant claimed to fear persecution on account of his homosexuality. The Tribunal was not satisfied that the applicant was a homosexual, that he was a member of a particular social group or that he would suffer persecution for this or any other Convention reason.

The Tribunal had doubts over the applicant's credibility and relied on a detention centre incident report from February 2005 to make findings regarding the applicant's accommodation at the time of the report. This information was put to the applicant at hearing and following the hearing the Tribunal summarised the content of the report in a letter pursuant to s.424A of the *Migration Act* 1958 (the Act). At hearing, the applicant's advisors sought access to a "complete copy" of the Villawood incident record. The applicant's advisors responded to the subsequent s.424A invitation claiming that the detention centre operations manager stated that the report may not be accurate and submitting that it may not be reliable for the relevant period. The applicant's advisors stated that they would not be in a position to finalise their submission until they had viewed the entire record and they were seeking access to the whole record through a Freedom of Information request. The Tribunal indicated in its decision that it was not prepared to await the outcome of that process before reaching its decision because it had already summarised the very brief report on which it relied in its s.424A letter.

Held: Appeal allowed. Tribunal decision set aside and remitted for reconsideration.

- (i) The Tribunal made a jurisdictional error because it breached s.424A(1)(b) of the Act. The Tribunal's failure to adequately explain the significance of the incident report in the mind of the presiding member was a failure to ensure that the applicant understood why the information was relevant to the review. The invitation did not explain that the February 2005 report was silent on the possibility that the applicant was occupying a different room to that which he had been allocated and that that silence established that his account was untrue.
- (ii) The Tribunal erred in exercising its discretion under s.424B(4) of the Act not to extend time for the applicant to respond to the s.424A letter and this resulted in a constructive failure to comply with the obligation in s.424A(1)(c) to invite the applicant to comment on particulars of the adverse information provided. There was no meaningful consideration of the request for additional time. Because the Tribunal knew the applicant's advisors had sought the full incident record, it was meaningless to say there was no point in waiting for the full record because the disclosed report was a mere six lines long. The Tribunal overlooked a fundamental consideration being that the applicant had asserted that he had a sexual relationship with another detainee over a period of six months and the Villawood incident record for the relevant period contained a May 2005 incident report which corroborated part of the applicant's claims. The second incident report was available to the Tribunal and should have been considered. If the Tribunal was unwilling to consider it, then it should have given the applicant time to do so.
- (iii) The Tribunal overlooked relevant material. The Tribunal sought and was granted access to part of the Villawood incident record and could have gained access to the balance of the record (which corroborated the applicant's claim to some extent) if it wanted and therefore the May 2005 incident report was constructively before the Tribunal. The Tribunal's failure to have regard to that incident report was a failure to have regard to relevant material.

SZFTD v MIMIA & Anor
[2006] FMCA 1873

Federal Magistrates Court of Australia, Nicholls FM, SYG 432 of 2005, 20 December 2006

The applicant, a national of Nepal, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations.

The applicant claimed that due to his anti-monarchical views, his refusal to join the Maoists and his association with the communist party, he was subjected to persecution from the Maoists, the authorities and the

supporters of the Government (National Democratic Party (NDP)). He further claimed that the cumulative effect of numerous instances of harassment led him to leave Nepal for Australia.

The Tribunal stated in its decision that “the principal claim made by the applicant was that he did not want to return to Nepal because he feared persecution by government security forces on the one hand and the Maoists”. It found that the applicant’s claims lacked credibility and neither of the applicant’s past nor current profile supported his allegations that he ran the risk of persecution at the hands of the Government and the Maoist forces in Nepal.

The applicant contended, amongst other things, that the Tribunal failed deal with an integer of his claim, namely that he feared persecution by the authorities and NDP because of his views and activities as an anti-monarchist. By failing to deal “squarely” with this aspect of his claims, the Tribunal committed a jurisdictional error.

Held: Tribunal decision quashed and remitted for reconsideration.

- (i) The Tribunal committed a jurisdictional error by failing to deal with an integer of the applicant’s claim that he held subjective fear which arose from the perceptions by the authorities and NDP relating to his anti-monarchical views.
- (ii) The Tribunal’s reduction of the applicant’s original statement to what occurred at the hearing, and its focus on “the principal claim made by the applicant”, itself leaves open the inference that the Tribunal dealt only with part of the applicant’s claims. That is, those parts that it saw as being “principal”, and the bases for that principal claim.
- (iii) While it was open to say that what was left at the hearing was that part of the applicant’s claims dealing with his anti-monarchical views, which may not have fallen into the category of “principal”, it was nonetheless a claim plainly required to have been “squarely” addressed by the Tribunal. It was not.

WAMC v MIMA & Anor

[2006] FMCA 1914

Federal Magistrates Court of Australia, McInnis FM, PEG 97 of 2006, 20 December 2006

The applicant, a national of Zimbabwe, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations.

The applicant claimed that he faced harm as a supporter of the Movement for Democratic Change and as a failed asylum seeker “non-compliant” returnee from Australia. The applicant relied on a report from Dixon Marisa and a decision of the United Kingdom Asylum and Immigration Tribunal that both indicated mistreatment of returnees from the United Kingdom (UK).

The Tribunal was not satisfied that a returnee from Australia, including the applicant, would be exposed to the harm that has been alleged in respect to returnees from the UK. It found:

The evidence before me does not suggest that returnees from Australia have been exposed to the kind of harm referred to by Dixon Marisa or the UK Tribunal. There is no reason to assume that the procedure adopted, in respect of UK deportees – that is requiring them to enter the International Terminal by a different door which leads to an area occupied by officers of the CIO – is or would be applied to a returnee from Australia.

On appeal, counsel for the applicant submitted that the above findings were based on speculation and that there was no evidence as to the treatment of Australian returnees or even whether there had been any returnees.

Held: Tribunal decision quashed and remitted for reconsideration.

- (i) There was no basis or evidence to support the Tribunal's findings. There was no evidence regarding the treatment of Australian returnees which was contrary to the evidence in respect of returnees from the UK or any other basis for the Tribunal to reach its conclusions.
- (ii) The absence of evidence may well lead the Tribunal to consider what had happened to nationals of other countries who despite the perceived increased risk that they might be regarded as "spies or opponents of the regime" does not relieve the Tribunal from making a finding based on actual evidence in relation to what might happen to Zimbabwe returnees from Australia.
- (iii) By making the assumptions and findings without a basis in fact and/or speculating as to the treatment of an Australian returnee, the Tribunal deprived itself of properly assessing whether the applicant had any basis for fear of persecution upon return for a Convention reason. This error affected the Tribunal's exercise of power notwithstanding a separate Tribunal finding that the applicant did not have a subjective fear of persecution.

SZFDK v MIMA & Anor

[2006] FMCA 1692

Federal Magistrates Court of Australia, Lloyd-Jones FM, SYG 3389 of 2005, 22 December 2006

The applicant, a Bangladeshi national, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations.

The applicant claimed to fear persecution arising from his membership of the Chhatra League, a student wing of the Awami League. The applicant submitted to the Tribunal a letter from a clinical psychologist suggesting that he was suffering from depression and post traumatic stress disorder. In affirming the decision, the Tribunal accepted the diagnosis by the psychologist regarding the applicant's condition but noted that her account of the events was based on information provided by the applicant. As the Tribunal also had concerns relating to the applicant's credibility, it did not accept that his psychological condition originated from past persecution arising from his political opinion.

The applicant contended, among other things, that the Tribunal denied him procedural fairness by failing to disclose conclusions that would not obviously have been open on the known evidence. Specifically, he contended the Tribunal failed to put him on notice that it could not accept that the post traumatic stress disorder resulted from his claimed persecution because the account of events accepted by the psychologist was given to her by the applicant.

Held: Tribunal decision set aside and remitted for reconsideration.

- (i) The Tribunal failed to accord the applicant procedural fairness in that it did not put the applicant on notice that it did not accept as correct the history given to the psychologist and recorded in the psychologist's report.
- (ii) The fact that the diagnosis would be accepted as correct but that the history would be rejected was not obvious and should have been disclosed to the application for comment.

MZXEL v MIMA & Anor

[2007] FMCA 13

Federal Magistrates Court of Australia, O'Dwyer FM, MLG1466 of 2005, 19 January 2007

The applicant, a national of China, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations. The applicant claimed that he held a well-founded fear of persecution for reason of his practice of Falun Gong.

The Tribunal found the applicant's claims to be a Falun Gong practitioner to be lacking in credibility. In particular, the Tribunal found the applicant's evidence at the hearing that the first exercise was done seated to be inconsistent with independent information from the Falun Dafa website which indicated that it was the last of the five exercises that was to be done seated. The Tribunal concluded that if the applicant really was a Falun Gong practitioner he would not have made this error. It followed that the Tribunal was therefore not satisfied

that either the applicant or his family had been harmed in any way in connection with Falun Gong or faced a real chance of persecution in the reasonably foreseeable future.

On appeal, the applicant contended, among other things, that the Tribunal's finding that he was not a Falun Gong practitioner was made on no evidence. He contended that the Tribunal's conclusions required evidence that all genuine Falun Gong practitioners would strictly do the exercises in a particular order. He also contended that the Tribunal's summary of the information obtained from the Falun Dafa website could not be considered evidence in support of the Tribunal's finding.

Held: Tribunal decision quashed and matter remitted for reconsideration.

- (i) The Tribunal made a jurisdictional error by making a critical finding without evidence to support that finding. The information obtained from the Falun Dafa website did not expressly support the Tribunal's critical conclusion that genuine Falun Gong practitioners were required to partake in the five exercises in strict compliance with a routine that required that the first four be standing and the last to be seated.
- (ii) It was not enough that the information from the Falun Dafa website may have by inference supported the Tribunal's findings. The Tribunal's finding in relation to the exercises was critical. Accordingly, it was incumbent on the Tribunal to expressly articulate the evidence upon which its findings were made. Should there have been evidence supportive of the Tribunal's conclusion on the question of the sequence of exercises then it was incumbent upon the Tribunal to refer to that evidence in sufficient detail as to identify its source. Not to have done so, even should it ultimately prove that there was evidence in support of the critical conclusion reached by the Tribunal, amounted to a failure to give reasons for the decision.

**SZAKT v MIMA & Anor
[2007] FMCA 51 (No.2)**

Federal Magistrates Court of Australia, Raphael FM, SYG 643 of 2003, 1 February 2007

The applicant, an infant son of two Bangladeshi applicants for protection visas, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations.

The applicant failed to appear at the Tribunal hearing and the Tribunal proceeded to make its decision pursuant to s.426A of the *Migration Act 1958* (the Act). The Tribunal, differently constituted, had previously considered the claims of the applicant's parents and found that they did not have a well-founded fear of persecution as it could not be satisfied of their credibility and found no independent evidence to support their claim. Based on the Tribunal's findings in relation to the applicant's parents, the Tribunal found no reason as to why the applicant had a well-founded fear of persecution should he return to Bangladesh.

The applicant claimed that the Tribunal failed to inform him in the manner required by s.424A of the Act, that: the Tribunal member who considered his parents' protection visa review application could not be satisfied as to their credit and found the parents did not have a well-founded fear of persecution; and that the Tribunal in the applicant's case relied on the claims set out in the Tribunal decision with respect to his parents and was of the view that the decision in his parent's review was correct.

The applicant had given the reference numbers for his parents' Departmental and Tribunal files in the protection visa application form. Counsel for the Minister contended that those files were thereby put before the delegate and were also provided to the Tribunal for the purposes of s.424A(3)(b) of the Act by virtue of the applicant's response to Section D of the Tribunal's form which stated "I am not satisfied by the DIMIA decision due to the delegate overlook lots of relevant information of my claim".

Held: Tribunal decision set aside and remitted for reconsideration.

- (i) The decision of the other Tribunal and the reasons for that decision, in particular the references to the parents' credibility constituted information which should have been provided to this applicant by way of a s.424A letter.

- (ii) The applicant did not put the files of the delegate and the Tribunal in his parents' case before the Tribunal. The phrase used by the applicant should be construed as a ground for bringing the case to the Tribunal (the applicant's lack of satisfaction with the delegate's decision) rather than being a shorthand way of putting his own claims before the Tribunal.
- (iii) If the applicant had put the files of the delegate and the Tribunal in his parent's case before the Tribunal by his response to section D, this did not include putting the facts of the Tribunal's rejection of his parents claims and the reasons therefore. It would have been irrational for the applicant to be supporting his claim for refugee status with a refutation of his parent's claim upon which he relies and this was not accepted as his intention. At most it could be said that the applicant intended to put his parents' grounds for claiming asylum to the Tribunal and asked that those be looked at afresh through eyes attuned to his own case.
- (iv) In the context of the otherwise total lack of information about the applicant's claims, the reference to the applicant's parents' files in the protection visa application was a shorthand way of repeating those claims made by his parents to the delegate.

SZGXB v MIMA & Anor

[2007] FMCA 50

Federal Magistrates Court of Australia, Raphael FM, SYG2083 of 2005, 1 February 2007

The applicant, a citizen of Bangladesh, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations. He claimed to face persecution from the ruling party as a journalist and high profile member of the Awami League (AL). He submitted a series of letters from senior AL officials in support of his claims.

The Tribunal did not accept any of the applicant's claims and found the applicant to be willing to make bogus claims and support them with unreliable documents. The applicant had obtained a visa by falsely claiming to be an insurance company executive. The Tribunal provided two of the letters to the Australian High Commission in Dhaka and received advice which it described as "unequivocal advice from the Awami League ... that the applicant's claim that he has a significant position in the party [...] is baseless". The Tribunal sent three letters pursuant to s.424A of the *Migration Act* 1958 (the Act) in relation to information from the protection visa application and information received from the High Commission in Dhaka.

There was no discussion by the Tribunal of the applicant's position as an AL journalist, nor any discussion of other corroborative material submitted by the applicant. The respondent accepted that the failure to discuss these matters could only be consistent with the Tribunal's obligations under the Act if the evidence about his position in the party was so badly impugned that the "well has been poisoned beyond redemption" as per *Re MIMA; Ex parte S20/2002* (2003) 183 ALR 58. The Tribunal could come to such a view only if done in compliance with the provisions of the Act. The issue for the Court was whether the Tribunal had complied with s.424A of the Act.

Held: Tribunal decision set aside and remitted for reconsideration according to law

- (i) The Tribunal failed to comply with s.424A(1)(b) of the Act in that the Tribunal did not ensure as far as is reasonably practicable that the applicant understood why the information it relied upon was relevant to the review.
- (ii) The second response from the High Commission's source stated, in relation to the two letters that were sent to it, that they were signed by the relevant persons but that the applicant "does not have a party identity". The Tribunal utilised this information to find that "the applicant and his advisers have only been able to demonstrate how unreliable supporting documents from Bangladesh are – a fact of which [they] are well aware". The unreliability of documents could not be implied from this response.
- (iii) The Tribunal could not utilise these words to support a proposition that, added to the Tribunal's finding about the explained false visa application, the well of the applicant's credibility was poisoned beyond redemption.

- (iv) The wording used about the High Commission's response was not such as to allow the Tribunal to come to such a conclusion without providing the applicant with a letter that ensured as far as is reasonably practicable that the applicant understood why the information was relevant to the review.

Obiter

- (v) The failure to deal with all the letters, the failure to consider in any way all the other corroborative material, the gratuitous comment about the applicant and advisers' awareness about unreliability of documents and the use of the term "bogus claims" could indicate to a properly informed hypothetical lay observer that the Tribunal might not have brought an impartial mind to the question to be decided.

Legislative developments of relevance to the work of the Refugee Review Tribunal are noted below.

▶ Legislation Pending

Migration Amendment (Review Provisions) Bill 2006

The *Migration Amendment (Review Provisions) Bill 2006* (the Act) was introduced to the Senate on 7 December 2006. On the same day, the Bill was referred to the Senate Legal and Constitutional Affairs Committee (SLCAC) for inquiry and report by 20 February 2007. Submissions were called for by 19 January 2007 and a public hearing was held in Sydney on 31 January 2007. The inquiry and the report by SLCAC were completed on 20 February 2007.

The Bill aims to amend the Act to:

Allow the Tribunal to orally give clear particulars of any information that the Tribunal considers would be the reason, or part of the reason, for affirming the decision that is under review and invite the applicant to comment on or respond to the information;

Provide that the obligation to give an applicant information and invite comment on or a response to the information does not extend to information already provided by the applicant to the Department of Immigration and Multicultural Affairs (the Department), as part of the process leading to the decision under review, other than information that the applicant has given orally to the Department;

Provide that if the Tribunal gives, orally or in writing, clear particulars of the information that the Tribunal considers would be the reason or part of the reason for affirming the decision under review, then the Tribunal must ensure, as far as is reasonably practicable, that the applicant understands why the information is relevant to the review and the consequences of the information being relied on in affirming the decision;

Provide that if an applicant is given information at the hearing, the Tribunal must advise that he or she may seek additional time to comment on or respond to the information;

Provide that if an applicant seeks more time to comment on the information and the Tribunal considers that the applicant reasonably needs additional time, the Tribunal must adjourn the review and provide the applicant with that opportunity;

Include new provisions that ensure that in carrying out the procedures and requirements regarding the natural justice hearing rule set out in the Act (which continue to be an exhaustive statement of the natural justice hearing rule), the Tribunal must do so in a way which is fair and just.

A copy of the bill can be found at:

[http://parlinfoweb.aph.gov.au/piweb/browse.aspx?path=Legislation%20%3E%20Current%20Bills%20by%20Title%20%3E%20Migration%20Amendment%20\(Review%20Provisions\)%20Bill%202006](http://parlinfoweb.aph.gov.au/piweb/browse.aspx?path=Legislation%20%3E%20Current%20Bills%20by%20Title%20%3E%20Migration%20Amendment%20(Review%20Provisions)%20Bill%202006)

A copy of the submissions received by the Senate Legal and Constitutional Affairs Committee as at 2 February 2007 can be found at:

http://www.aph.gov.au/Senate/committee/legcon_ctte/mig_review_provisions/submissions/sublist.htm

A copy of the report by the Senate Legal and Constitutional Affairs Committee can be found at:

http://www.aph.gov.au/Senate/committee/legcon_ctte/mig_review_provisions/report/index.htm

CASELOAD OVERVIEW

RRT Decisions – February 2007

Country	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Albania	0	2	0	0	2
Argentina	0	0	0	1	1
Bahrain	1	1	0	0	2
Bangladesh	1	6	1	18	26
Brazil	0	1	0	0	1
Burma (Myanmar)	2	3	0	0	5
China (PRC)	21	76	0	3	100
Colombia	1	1	0	0	2
East Timor	0	1	0	0	1
Ethiopia	2	0	0	0	2
Fiji	0	2	0	0	2
Ghana	0	1	0	0	1
India	3	17	0	6	26
Indonesia	1	11	0	0	12
Iran	1	0	0	0	1
Iraq	1	0	0	0	1
Israel	0	1	1	0	2
Kenya	0	2	0	0	2
Korea, Dem Peoples Rep of	0	1	0	0	1
Korea, Republic Of	0	4	0	0	4
Kyrgyzstan	2	0	0	0	2
Laos, Peoples Democratic Rep	0	1	0	0	1
Lebanon	0	5	0	0	5
Liberia	0	1	0	0	1
Lithuania	0	1	0	0	1
Malaysia	1	8	0	2	11
Mongolia	1	0	0	0	1
Nepal	3	5	0	1	9
Nigeria	1	2	0	0	3
Pakistan	2	7	0	0	9
Philippines	0	6	1	0	7
Russian Federation	1	1	0	0	2
South Africa	0	1	0	0	1
Sri Lanka	11	3	0	0	14
Thailand	0	6	0	0	6
Turkey	0	1	0	0	1
United Kingdom	0	1	0	0	1
Vietnam	0	1	0	0	1
Zimbabwe	1	0	0	0	1

ACCESSING TRIBUNAL DECISIONS

Access on Tribunal Premises

Access to published decisions of the Refugee Review Tribunal can be obtained from the Sydney and Melbourne Registries of the Tribunal.

The Sydney Registry is located at: Level 11
83 Clarence St
Sydney NSW 2000

The Melbourne Registry is located at: Level 12
460 Lonsdale St
Melbourne VIC 3000

Access via the Internet

A selection of Tribunal decisions is also currently available on the Refugee Review Tribunal's World Wide Web site located at <http://www.rrt.gov.au>.

The web site also contains information about how to apply to the Tribunal, how the Tribunal is organised, the function of the Tribunal and what it aims to achieve, caseload statistics, as well as copies of this and previous RRT Bulletins.

The RRT web site is updated on a regular basis.

The Tribunal's Email address is: rrtinfo@rrt.gov.au

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