

FEDERAL COURT OF AUSTRALIA

Harirchi v Minister for Immigration & Multicultural Affairs [2001] FCA 1576

NADER HARIRCHI v MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS

N W135 of 2001

SACKVILLE, KIEFEL & HELY JJ

PERTH

7 NOVEMBER 2001

IN THE FEDERAL COURT OF AUSTRALIA

WESTERN AUSTRALIA DISTRICT REGISTRY

W135 OF 2001

ON APPEAL FROM A JUDGE OF THE FEDERAL COURT OF AUSTRALIA

BETWEEN: NADER HARIRCHI

APPELLANT

AND: MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS

RESPONDENT

JUDGES: SACKVILLE, KIEFEL & HELY JJ

DATE OF ORDER: 7 NOVEMBER 2001

WHERE MADE: PERTH

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The appellant pay the respondent's costs.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

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DATE: 7 NOVEMBER 2001

PLACE: PERTH

REASONS FOR JUDGMENT

the court:

1 This is an appeal against orders made by a Judge of this Court dismissing an application for review of a decision of the Refugee Review Tribunal (“RRT”). On 31 October 2000, the RRT affirmed a decision of a delegate of the respondent (“the Minister”) not to grant the appellant a protection visa.

2 The appellant was represented by a migration agent before the RRT. He was legally represented in the proceedings determined by the primary Judge. The appellant’s notice of appeal was, however, prepared without legal assistance and he has represented himself at the hearing of the appeal.

the appellant’s claims

3 The appellant is an Iranian citizen, born in Teheran on 25 October 1963. He is a Shia Muslim and speaks the Farsi language. The appellant completed a tertiary education in Iran in 1993, obtaining an engineering certificate. Between 1993 and his departure from Iran in May 2000, he was employed as an industrial designer.

4 Before the RRT the appellant claimed that he had been denied access in Iran to further education and thus had been unable to obtain specialist qualifications. He claimed that, despite an excellent academic record, he has been refused admission to many colleges. Since he had never been given any explanation for his rejection, he had concluded that the authorities must have imputed a political opinion to him and discriminated against him for that reason.

5 The appellant claimed that in 1985 he had become acquainted with two members of the Mujahadeen, an organisation hostile to the Iranian regime. The appellant claimed that his aunt supported the two Mujahadeen and that, out of friendship, he had offered them practical support. The appellant said that he had not supported the Mujahadeen politically because

of their religious orientation, but he had been sympathetic to them because of their opposition to the Iranian regime.

6 The appellant claimed that one of the Mujahadeen was arrested in 1987 and executed a short time thereafter. According to the appellant, his aunt had been detained for a period for two years and was released only after she began to co-operate with the authorities. The other Mujahadeen member was arrested and detained for two years.

7 The appellant said that for many years he continued to assist his friend, the surviving Mujahadeen member, and that he eventually gave his friend \$500 to enable him to leave Iran. However, the friend was arrested prior to his departure and was still in prison at the time the appellant himself left Iran.

8 The appellant also claimed that his friend had removed from his (the appellant's) desk drawer six computer disks containing sensitive information, such as maps and army locations. The appellant claimed that he feared that the friend had copied those disks and that he was at risk of being punished by the authorities.

the rrt's reasons

9 The RRT accepted that denial of access to education could amount to persecution and could bring an applicant within the scope of the *Convention Relating to the Status of Refugees* if the persecution had been for a *Convention* reason. The RRT noted, however, that the appellant had attended University for six years and had succeeded in obtaining remunerative, professional work in Iran. In these circumstances, even accepting that the appellant had been denied some further educational opportunities, the RRT found that he had merely suffered discrimination, falling well short of persecution. In any event, the RRT considered that the appellant's assumption that he had been excluded from further courses of study for reasons of imputed political opinion was merely speculative and was at odds with his ability to undertake tertiary education even after his friends had been arrested. It followed that the RRT was not satisfied that any difficulties experienced by the appellant were for a *Convention* reason.

10 The RRT pointed out that the appellant had never supported the Mujahadeen politically. Even if it were to accept the appellant's claims about the fate of his two friends and of the aunt, the appellant himself had never come to harm for any *Convention* reason. The authorities had had ample opportunity to question the appellant and to take action against him, if they were inclined to do so. The lack of official action against the appellant indicated that he was not the subject of interest by the authorities.

11 The RRT considered that it was plausible that the appellant had assisted his friend, as he had claimed. The RRT, however, rejected the appellant's claim that his assistance to his friend was the occasion for the

authorities to pursue him. The RRT considered that the appellant's account on this issue lacked credibility and that, in view of the appellant's vagueness about the details of his friend's incarceration, the RRT was not satisfied that the friend had ever been detained.

12 The RRT found that, in view of the tight exit procedures in force in Iran, and the interest of authorities in monitoring Iranian citizens regarded as political offenders, the RRT found it implausible that the appellant would have been able to pass through all airport checks if he had been wanted by the authorities.

13 The RRT observed that the appellant had not made any timely mention of his friends having stolen sensitive material. That claim had been central to the appellant's case, yet he had not taken advantage of a number of prior opportunities to outline it. The RRT found it was inconceivable that the claim would be altogether omitted for so long if it were true. The RRT rejected the explanations offered by the appellant as to why he had made no timely mention as to the theft of the computer disks, finding that it was not plausible that he had misconstrued the purpose of his initial interview so as to believe it was unconcerned with his claims for refugee status. The RRT found that he had fabricated this claim in order to bolster his application for a protection visa.

14 The RRT concluded that the appellant did not have a well-founded fear of persecution for any *Convention* reason.

the primary judge's decision

15 The appellant raised three contentions before the primary Judge. These may be summarised as follows:

- The RRT had failed to consider whether the appellants had been a member of a "particular social group" in Iran and had suffered persecution for that reason. The group identified by the appellant's counsel comprised "very able persons who had political views or affiliations opposed to the government of Iran".
- The RRT had failed to comply with s 430(1)(c) of the *Migration Act 1958* (Cth), in that it had not set out all its findings on material questions of fact. The three issues which the RRT is said not to have addressed were the following:
 - “(a) the reason the University had refused to accept the medical report the applicant had asked it to accept as his excuse for his absence from his bachelor's degree course whilst hiding from the authorities;
 - (b) whether the lower mark the applicant received in consequence of that refusal presented an obstacle to his furthering his education; and
 - (c) whether the applicant had later made any attempts to further his education, and if so, what those attempts had been, whether those

attempts had failed, and if so, the reasons (or possible reasons) those attempts had failed.”

- The RRT’s decision to dismiss the application had been affected by its views of the appellant’s credibility.

16 The primary Judge rejected each of these contentions. His Honour held that none of the detailed material submitted on the appellant’s behalf to the RRT by his solicitors provided evidence of the existence of a particular social group identified by his counsel. There was no obligation on the RRT to consider the point because there was simply no evidence upon which it could conclude that the appellant had belonged to a particular social group defined in that way. Moreover, the RRT had determined that any discrimination suffered by the appellant did not amount to persecution. This was a finding of fact open to the RRT. The appellant’s submission, in effect, invited the Court to go behind that finding of fact since it was fatal to a claim based on fear of persecution by reason of membership of a particular social group.

17 The primary Judge rejected the appellant’s second argument on the basis that none of the three issues that had been identified could be described as a “material question of fact”. Each of the three matters had been relied upon in order to support a finding that discrimination had occurred. None of them assisted in determining whether the discrimination, which the RRT accepted, amounted to persecution. There was therefore no breach of s 430 of the *Migration Act*.

18 His Honour regarded the third submission as misconceived, since the finding on credibility was precisely the function of the RRT.

the appellant’s submissions

19 Neither the notice of appeal nor the written submissions prepared by the appellant addressed any of the arguments advanced to the primary Judge. There is, in our view, no reason to doubt the correctness of the primary Judge’s rejection of those arguments. We should add that the argument based on s 430(1)(c) of the *Migration Act* would encounter additional difficulties by reason of the decision of the High Court in *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 180 ALR 1, which was handed down after the primary Judge delivered judgment in the present case.

20 The matters raised by the appellant involve challenges to the factual findings made by the RRT. None of these arguments was put to the primary Judge. In any event, they raise issues going only to the merits of the RRT’s decision and do not establish any ground of review available under s 476(1) of the *Migration Act*.

21 An illustration is provided by the appellant’s complaint about the RRT’s finding that he had not made any timely mention of the theft of the computer disks. The appellant pointed out that he had made the claim both in an

interview with the delegate and in the statement prepared on his behalf for the RRT. But the RRT's point was that the appellant had failed to take advantage of earlier opportunities to raise the central claim. The RRT specifically rejected the appellant's explanation for his failure. The appellant has not established any error on the part of the RRT, much less an error of law on the part of the primary Judge.

22 A second illustration is provided by the appellant's complaint that there was no basis for the RRT's finding that it was not satisfied that the appellant's friend had been detained. This was a factual issue for the RRT to determine. As Mr Ritter, who appeared for the Minister, pointed out, it was not incumbent on the RRT to set out its reasons for rejecting the appellant's evidence: cf *Re Minister for Immigration and Multicultural Affairs; Ex parte Durairajasingham* (2000) 168 ALR 407, at 423, per McHugh J. In any event, although the appellant contended otherwise, the RRT did give reasons for its finding. Whether those reasons are or are not convincing is not for the Court to determine.

23 In his oral submissions to this Court, the appellant emphasised that educational opportunities in Iran were extremely important to him. He contended that the RRT had failed to appreciate the significance of the educational opportunities he had been denied. This issue was, however, addressed by the primary Judge. His Honour pointed out that the RRT had determined the appellant's claim on the basis that any discrimination suffered by him did not amount to persecution by reason of an actual or imputed political opinion. The RRT's reasons clearly indicate that it appreciated the significance to the appellant of the educational opportunities he had been denied. The RRT was, however, not satisfied that any denial of educational opportunities could be brought within the scope of the *Convention*.

24 The appellant indicated that he wished to rely on certain material that was not before the RRT. This issue was not raised by the appellant's counsel in the proceedings determined by the primary Judge. There is no basis upon which this Court could receive the material.

25 The appeal must be dismissed, with costs.

I certify that the preceding twenty-five (25) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justices Sackville, Kiefel and Hely.

Associate:

Dated: 7 November 2001

The Applicant was unrepresented.

Counsel for the Respondent:	Mr M Ritter
Solicitor for the Respondent:	Australian Government Solicitor
Date of Hearing:	7 November 2001
Date of Judgment:	7 November 2001