FEDERAL COURT OF AUSTRALIA

Migration - Application for review of decision by the Refugee Review Tribunal refusing grant of a protection visa – meaning of 'political opinion' – whether the Tribunal failed to address the question of imputed political opinion - whether the issue arose on the Tribunal's findings.

Migration Act 1958 (Cth) ss 5(1), 36(2), 476(1)(e)

Convention Relating to the Status of Refugees, Article 1A(2)

Bouianov v Minister for Immigration and Multicultural Affairs (unreported, Branson J, 26 October 1998), followed.

Guo v Minister for Immigration and Ethnic Affairs (1996) 64 FCR 151, followed.

Luu v Renevier (1989) 91 ALR 39, cited.

Minister for Immigration and Ethnic Affairs v Guo Wei Rong (1997) 144 ALR 567, cited.

Minister for Immigration and Multicultural Affairs v Y (unreported, Davies J, 15 May 1998), referred to.

Perampalam v Minister for Immigration (Hill J, 23 October 1998, unreported), distinguished.

Prasad v Minister for Immigration and Ethnic Affairs (1985) 6 FCR 155, cited.

Ward v Attorney General of Canada [1993] 2 SCR 689, followed.

SALIM SALIBA v MINISTER FOR IMMIGRATION AND ETHNIC AFFAIRS

NG 589 of 1998

JUDGE: SACKVILLE J

PLACE: SYDNEY

DATE: 5 NOVEMBER, 1998

IN THE FEDERAL COURT OF AUSTRALIA	
NEW SOUTH WALES DISTRICT REGISTRY	NG 589 of 1998

BETWEEN:	salim SALIBA Applicant
AND:	MINISTER FOR IMMIGRATION AND ETHNIC AFFAIRS Respondent

JUDGE:	SACKVILLE J.
DATE:	4 NOVEMBER, 1998
PLACE:	SYDNEY

THE COURT ORDERS THAT:

1. The decision of the Refugee Review Tribunal made on 19 May 1998 be set aside.

2. The matter be remitted to the Tribunal for rehearing according to law.

3. The respondent to pay the applicant's costs.

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

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REASONS FOR JUDGMENT

Background

The applicant is a Lebanese national who arrived in Australia on 24 February 1996. On 9 December 1996, he applied for a protection visa. That application was refused by the Minister's delegate on 5 May 1997. The applicant applied for review of the primary decision by the Refugee Review Tribunal ("RRT"). On 19 May 1998, the RRT affirmed the delegate's decision. The applicant now seeks review of the RRT's decision, on the ground that its decision involved an error of law: *Migration Act* 1958 (Cth) ("*Migration Act*"), s 476(1)(e).

One of the criteria for the grant of a protection visa is that the Minister (or, on appeal, the RRT) must be satisfied at the time of the decision that the applicant is a person to whom Australia has protection obligations under the *Convention Relating to the Status of Refugees* done at Geneva on 28 July 1951, as amended by the *Protocol Relating to the Status of Refugees* done at New York on 31 January 1967 (the "*Convention*"): *Migration Act,* ss 5(1), 36(2).

Article 1A(2) of the *Convention* defines a refugee as any person who:

"owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

The applicant's claim before the RRT was that he had a well-founded fear of being persecuted in Lebanon for reasons of political opinion. The RRT accepted that the applicant feared being killed if he were to return to Lebanon. However, it rejected his claim on the ground that it was not satisfied that there was a real chance that he would face persecution for a *Convention* reason.

Course of Events

The Application Form

The applicant prepared a handwritten application for a protection visa. In that application he stated that in June 1986 his cousin had been killed by a man who belonged to an organisation called "Marada". The applicant, perhaps influenced by the *Convention* definition of "refugee", described that organisation in his application as a "particular social group". The material before the RRT indicated, among other things, that Marada was a Christian militia "hold[ing] the mountainous north Lebanon fiefdom of the Franjieh clan".

The applicant claimed that he and other members of his family had gone to "the tribunal" in Lebanon to prosecute his cousin's killer, but that he had been threatened with death "by the responsible [sic] of the social group". He continued as follows:

"After 9 years 10 months we went back to the tribunal to inform about the murder but unfortunately I got threaten again by the social group to drop down our rights as far as I am the only witness to say the truth and confirm the murderer. I said after 9 years and 10 months because war existed and as soon as law took his place we went to the tribune, that long because in Lebanon and after 10 years all crimes is to be dropped down.

Under this pressure of threatening and being unsafe by my murderer I left my country and came to claim refugee.

In case of going back to Lebanon, I fear to be killed and never have freedom to move wherever I like to."

The application form posed the following question:

"Who do you think may harm/mistreat you if you go back?"

The applicant replied as follows:

"Both of the responsible of the social group, the political man and the killer himself could harm me."

The application form also asked why the applicant thought he would be harmed if he returned to Lebanon. He replied as follows:

"They will harm me and mistreat me because they want me to drop down my rights and claim that the murderer is innocent so he wouldn't be behind bars and jailed."

The applicant also said that he could not be protected by the Lebanese authorities because of Marada's connections with the Syrian army in Lebanon, especially in the north.

The Judgment of the Lebanese Court

Among the material the applicant submitted to the RRT was an English translation of a judgment of the Northern Lebanon Criminal Justice Court, apparently delivered on 28 November 1996. The judgment of the three member Court recorded that the man named by the applicant as his cousin's killer was a fugitive from justice. The Court deemed the warrant for the defendant's arrest to be effective. The judgment recorded that charges against the defendant of deliberately killing the applicant's cousin had been published.

The Court found that in June 1986 the applicant and his cousin were driving a vehicle on the outskirts of Zagharta, in northern Lebanon. They were passed by an empty school bus, driven by the defendant, which collided with their vehicle. When the cousin got out of the car to inspect the damage, the defendant shot him, using an unlicensed military revolver. The cousin later died. The defendant escaped from the scene.

The Court found the defendant guilty *in absentia* of the unlawful killing of the applicant's cousin. It sentenced the defendant to eighteen years hard labour "mitigated to nine years hard labour". The defendant was also ordered to pay LL 50 million to the heirs of the deceased.

The Interview

The RRT conducted an interview with the applicant on 5 May 1998. The applicant was not legally represented, but an interpreter translated for him. The transcript of the hearing consists of seventeen double spaced pages.

In the course of the interview, the applicant said that other witnesses to the murder had been threatened and that they had changed their statements by reason of the threats. He was the only witness left who was a relative of the deceased. The applicant, too, had been threatened with death by Marada if he did not change his statement. The applicant explained that the Marada was a Christian party in Lebanon, which nonetheless supported the Syrians. The applicant claimed to be a sympathiser of the Lebanese Front, which supported the Lebanese armed forces. He was not a supporter of Marada.

The applicant said that he had asked the leader of Marada, whom he identified as "Suliman", to put the man who killed his cousin in gaol. However, the leader refused. The applicant and the deceased's father reactivated criminal proceedings against the defendant just before the expiry of the ten year limitation period, applicable under Lebanese law. The applicant took this course notwithstanding threats made against his life, threats which continued during the court proceedings. When asked by the RRT Member who made the threats the applicant answered as follows:

"The person who killed and at the same time his leader Suliman asked us seven, eight times to surrender our demand, our rights, but we refused and he had already done this before with others and he was successful in convincing those people to surrender their rights."

The applicant also claimed that his brother had been shot by someone from the Franjieh family. He said that his brother was unable to gain treatment in a hospital because Sulayman Tony Franjieh was the Minister for Health. The applicant's brother, aged 27, had subsequently died of his wounds. Another cousin of the applicant had been shot by a member of the Franjieh family.

The applicant described Sulayman Tony Franjieh as "more important than the President because of his relations with the Syrians". The applicant said that Mr Franjieh had sent the police to his family. The police had threatened his family "by all means", asking them to persuade the applicant to change his evidence.

These claims led to the following exchange between the RRT Member and the applicant.

"Q37 You feel what the murderer and the family are doing to you amounts to persecution. Do you remember [that] the definition the persecution has to be one of five reasons. Now, they are not persecuting you because of your religion. They are not persecuting you because of your nationality. They are not persecuting you because of your political opinion.

A (Intprtr) It's my inclinations, my sympathy or support that led us all to this situation.

Q38 But the point that I am making is that really it is a criminal matter. You were a witness to a murder of a relative, but it could have been of anyone, but it was of a relative and so it was very important to you, you wish justice to be done. However, the murderer belongs to a very powerful family, a powerful family who, according to you, can not only bring pressure to bear on the police, but also threaten you with your very life.

A (Intprtr) Yes, even though there is a government – they shot my cousin even though there is now a government in Lebanon so they don't discriminate, they don't care, you know, and they can any time do whatever they like.

Q39 No, no, I follow that, but the problem is that the persecution is not for one of the reasons in the definition.

A (Intprtr) And that's our support or sympathy with the Lebanese forces. My father, all members of our family, that's how our

problems stemmed from and they do know that we are supportive of those and they tried to convince us to become with the Marada, but we refused and that's the reason why I'm in danger.

Q40 But the reason that they are persecuting you is not because you didn't join Marada, but because you are persevering in making sure justice is done. There are probably lots of people who are not interested in joining Marada. They do not go around shooting all those people or trying to kill them. If they were doing that certainly they would be persecuting them because of their political opinion, but they are persecuting you, according to your evidence, because you wish to see justice done.

A (Intprtr) Can I say?

Q41 Yes, of course.

A (Intprtr) The source of the problem is the fact that I didn't join them and become a member of them and that my interests and support was not with them and that's the origin of the whole problem. Right now there is a government and state in Lebanon, nevertheless he didn't let that killer go to prison and they had threatened us. So if I do go back they want me -–want us surrender our lives and they would kill me. My life is in danger by those people.

Q42 …I do see that there is a political element to it. What I must consider is what is the reason they are pursuing you? Is it because you won't join Marada or is it because you represent a threat to them because you have pursued justice?…"

It is apparent from this exchange that the RRT Member had formed the view that, although the applicant had been persecuted, it was not because of his political opinions. He was being persecuted because he wished to see justice done and because he represented a threat to "them", that is, Marada.

The RRT's Decision

The RRT dealt with the applicant's claim briefly. It first set out in conventional terms the general principles governing the construction of Article 1A(2) of the *Convention.* The RRT then recorded the applicant's claim to refugee status as follows:

"The applicant in his primary application stated that on 11 June 1986 he was passing Zghorta in North Lebanon accompanied by his cousin. A young man whom the applicant named and described as being well connected to the Marada militia killed his cousin. He stated that he went to court to have it deal with the murder but he

himself was threatened by members of the Marada that he would be held responsible for the murder.

The applicant stated that after 9 years he returned to the court to press the matter of the murder but he was again threatened by members of Marada who were shielding the murder. He stated he was the only witness. He stated that war had intervened and he did not want the crime to pass the statute of limitations of 10 years. He stated he left the country because of the threats he received to drop the matter. He claims he fears he will be killed if he returns and will not have freedom of movement. He says he fears both the murderer and the members of the Marada.

He stated that as long as there were foreign soldiers in Lebanon, he could not gain protection from Marada who work closely with the Syrian army, particularly in the north.

In his oral evidence to the Tribunal the applicant confirmed that the above outline reflected correctly his situation. He stated that there had been other witnesses but that the Marada supporters of the murderer had induced them to withdraw their evidence. However, on the basis of the applicant's testimony the murderer had been sentenced in absentia by a Lebanese court to a prison sentence and to pay compensation to the family of the victim. However, as the murderer had not been located by the authorities he was still at large and the applicant feared both the murderer and the powerful Marada supporters of the murderer. He explained that the murderer had family links to the powerful Franjieh clan whose head is now a powerful minister in the Lebanese government. He claimed that his family members could no longer have access to health facilities because the powerful Franjieh clan leader is the minister of public health and that the clan has close links with the Syrian forces still playing an influential role in Lebanese politics and society. He stated that the supporters of the murderer have disabled the brother of the victim by shooting him in the legs. This person is of course, like the victim, a cousin of the applicant. He stated that the family of the murderer are known as 'killers' and his family in Lebanon, like the applicant, are terrified. He stated that he, like his family, are much closer to the Lebanese Forces and have resisted being involved with the Marada and that has exacerbated the ill-feeling felt towards him by the Marada in pursuing him over the conviction of the murderer."

The RRT noted that the applicant had submitted translations of letters from his sister attesting to the terror felt by the family and the fear they had for the applicant's safety should he return to Lebanon. The RRT also referred to the judgment of the Lebanese Court, nothing that it supported the applicant's claims.

The RRT then set out some information relating to Marada. It had been described in a 1991 report as follows:

"A Christian militia with about 2,000 members who hold the mountainous north Lebanon fiefdom of the Franjieh clan. It backs the Arab peace plan for Lebanon. It was founded in 1976 by Tony Franjieh, the son of former President Suleiman Franjieh, who is one of Syria's main Christian allies."

The RRT also quoted a cable from the Department of Foreign Affairs and Trade providing the following information on the Marada militia:

"The Marada militia, whose leader was Tony Franjieh, was never a large militia, though it had a reputation for toughness. It effectively ceased its operations in the early 1980s, when Syrian forces established a presence in the north. It is therefore 'in control' of no part of the country, and cannot be said to be 'active' since such activities as its loyalists undertake are politically insignificant. We understand there are still people loyal to the Marada, including in the north, but they do not advertise their activities. Sulayman Tony Franjieh, son of the Marada leader, is now an ally of the Syrians."

The RRT noted that, on 7 November 1996, the Prime Minister of Lebanon announced the formation of his third cabinet. Tony Suleiman Franjieh was reappointed to the cabinet holding "the powerful post of Minister for Public Health".

The RRT stated that it was not satisfied that the applicant was a refugee, because the evidence did not establish that there was a real chance that he would be persecuted for a *Convention* reason in Lebanon. The RRT gave the following reasons for this conclusion:

"The applicant claims that he is in danger of persecution because of his role in pursuing the murder of his cousin and in so doing he has incurred the enmity of the powerful Franjieh clan and the Marada.

The Tribunal is satisfied by the evidence from the court case judgment that the applicant has been instrumental in securing the conviction of the murderer of his cousin and in so doing he has incurred the enmity of the Franjieh clan and the Marada. The Tribunal is also satisfied that the applicant fears the vengeance of the murderer who is still at large. However, the Tribunal finds that any harm the applicant might suffer is not for a Convention reason. **The Tribunal finds that the fact that the applicant is not a supporter of the Marada, which the applicant argued made the harm he feared to be for reason of his political opinion, to be irrelevant and that he was being threatened because of personal vengeance over the applicant's role in the court case, rather than for his political opinion because the applicant has fought for justice over the murder of a family member and because the threats allegedly being made towards the applicant by the members of the murderer's family are also for reason of their family allegiance** [sic]. In Applicant A & Anor v MIEA & Anor (1997) (142 ALR 331) McHugh J stated (at 360) that the Convention was not designed to provide havens for individual persecutions. This was supported in the recent case of Ming Lin QIU v MIMA, Federal Court of Australia, 15 August 1997 in which Beaumont J stated (at 2) that:

> It is true that the applicant's case before the Tribunal may have established a foundation for a finding that the applicant had been 'persecuted' by some individual. However, for the reasons given by Burchett J in Ram v Immigration and Ethnic Affairs (1995) 130 ALR 314 at 317, even if such a persecution were to be made out, it does appear

> that any harmful acts were done purely on an individual basis, and this is not a Convention reason for declaring a person a refugee.
>
> The Tribunal appreciates that the applicant genuinely fears for his life from powerful elements in Lebanese society. However, the Tribunal's role is limited to determining whether the applicant satisfies the criteria for the grant of a protection visa. A consideration of his circumstances on humanitarian grounds is a matter solely within the Minister's discretion." (Bolding added.)

The core of the RRT's reasoning is contained in the bolded passage. The passage is not entirely easy to follow, probably because some words or punctuation have been omitted. However, Ms Backman, who appeared for the Minister, accepted that the passage was intended to reflect the reasoning foreshadowed by the RRT Member's comments during the hearing. Taking that into account, the RRT appears to have made the following important findings of fact:

- the applicant had not been threatened by reason of his failure or refusal to support Marada;
- the applicant had been threatened because of personal vengeance over his role in the court case and because he had fought for justice over the murder of a family member; and
- threats had also been made against the applicant because of the family allegiance of those making the threats.

Applicant's Submissions

Mr Diab, who appeared on behalf of the applicant, submitted that the RRT had erred in law on two grounds.

First, the RRT failed to apply correctly the "real chance" test laid down by the High Court in cases such as *Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379, *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225, and *Minister for Immigration and Ethnic Affairs v Guo Wei Rong* (1997) 144 ALR 567. That test required the RRT to identify the applicant's fear and the circumstances in which it arose. In the present case, the RRT had accepted that the applicant feared for his life from powerful elements within Lebanese society, but had failed to identify the basis of those fears. The applicant in fact feared persecution because of the political affiliations of those who had threatened him. The RRT had failed to refer to incidents between the applicant and members of Marada supporting his claim that he feared persecution by reason of his political opinions.

Secondly, the applicant submitted that the RRT should have addressed whether his fear was addressed upon imputed political opinion. In particular, the RRT had not considered whether the fears held by the applicant arose by reason of members of Marada imputing a political opinion to him as a person who pressed charges against one of their number, thereby undermining their authority in Lebanon.

In the event, it is necessary only to address the applicant's second argument.

Political Opinion

Curiously enough, despite the applicant's reliance on the doctrine of imputed political opinion, neither party referred to authorities construing the expression "political opinion", as used in Article 1A(2) of the *Convention.* The authorities were, however, helpfully analysed by Beaumont J in *Guo v Minister for Immigration and Ethnic Affairs* (1996) 64 FCR 151 (FC), at 159-165, with whose analysis Foster J agreed (at 189). While the Full Court's decision was reversed by the High Court, no doubt was cast on Beaumont J's examination of this issue: see 144 ALR at 580-581. What follows draws in part on Beaumont J's analysis.

In general, a broad view has been taken of the concept of "political opinion". Guy Goodwin-Gill states that the expression

"should be understood in the broad sense to incorporate, within substantive limitations now developing generally in the field of human rights, any opinion or any matter in which the machinery of State, government and policy may be engaged."

The Refugee in International Law (2nd ed 1997)), at 49. This definition was cited with approval by the Supreme Court of Canada in *Ward v Attorney-General of Canada* [1993] 2 SCR 689, at 746.

In *Ward*, the Court also cited (at 746) the comment of A Grahl-Madsden, *The Status of Refugees in International Law* (1966), at 220, that the *Convention* applies where persons are persecuted on the ground

"that they are alleged or known to hold opinions contrary to or critical of the policies of the government or ruling party."

La Forest J (who delivered the judgment of the Court) pointed out that this definition assumes that the persecution from whom the claimant is fleeing is always the government or ruling party, or at least some party having parallel interests to those of the government. La Forest J regarded this assumption as inaccurate, because the

Convention applies where the State is not an accomplice to the persecution, but is simply unable to protect the claimant. Thus, the *Convention* could apply to a claimant seen as a threat by a group unrelated or even opposed to the government, if the threat arises by reason of the claimant's political viewpoint, perceived or real.

La Forest J added two refinements to this analysis. The first was as follows (at 746):

"[T]he political opinion at issue need not have been expressed outright. In many cases, the claimant is not even given the opportunity to articulate his or her beliefs, but these can be perceived from his or her actions. In such situations, the political opinion that constitutes the basis for the claimant's well-founded fear of persecution is said to be imputed to the claimant."

The second refinement (at 747) was that the political opinion ascribed to the claimant and for which he or she fears persecution need not necessarily conform to the claimant's true belief. The issue has to be considered from the perspective of the persecutor.

Ward itself is an illustration of the principle of imputed political opinion. Ward was a member of a terrorist organisation, the INLA. The INLA had imposed a death sentence on Ward because he had helped some hostages to escape. The Supreme Court held that Ward feared persecution by reason of his political opinions. La Forest J said this (at 748-749):

"To Ward, who believes that the killing of innocent people to achieve political change is unacceptable, setting the hostages free was the only option that accorded with his conscience. The fact that he had or did not renounce his sympathies for the more general goals of the INLA does not affect this. This act, on the other hand, made Ward a political traitor in the eyes of a militant para-military organization, such as the INLA, which supports the use of terrorist tactics to achieve its ends. The act was not merely an isolated incident devoid of greater implications. Whether viewed from Ward's or the INLA's perspective, the act is politically significant. The persecution Ward fears stems from his political opinion as manifested by this act."

In *Guo,* Beaumont J endorsed (at 160) the proposition, expressed in the United Nations High Commissioner for Refugees *Handbook on Procedures and Criteria for Determining Refugee Status* (1979) (the "*Handbook*"), par 82, that a person may fear persecution because of a political opinion, even if that opinion has not yet been expressed. His Honour also cited with approval (at 160) the statement by J C Hathaway, *The Law of Refugee Status* (1991), at 152:

"An alternative to grounding a claim in adherence to a political opinion per se is to rely on evidence of engagement in activities which imply an adverse political opinion, and which would elicit a negative governmental response tantamount to persecution."

In my opinion, the reference to a "governmental response" in this passage needs to be qualified by the principles stated in *Ward,* to which Beaumont J also referred with approval.

The broad approach adopted by Beaumont J in *Guo* was followed by Davies J in *Minister for Immigration and Multicultural Affairs v Y,* unreported, 15 May 1998. That case had some similarities to the present. Y was a citizen of Brazil. Together with a friend, an investigative reporter, Y witnessed a policeman shoot a boy being assaulted by other police. The matter was reported but the authorities did nothing. Y and his friend were abducted and tortured and his friend was killed when run over by a motor vehicle. Y's wife was raped. Y later received threatening telephone calls and left Brazil with his family in fear of their lives.

Davies J considered that the RRT had not erred in finding that Y had suffered persecution due to his political opinion and the political opinion attributed to him by officers of the state. The RRT, in its own words,

"decided that the applicant's stance against criminal activity of police officers led to the persecution which he suffered, and that stance was effectively the expression of a political opinion against a pervasive aspect of the Brazilian state" (at 3).

Davies J observed (at 5) that the RRT in its reasons

"very properly turned its attention to ascertaining whether the opinions and actions taken by Y would have been likely to have been regarded as adverse to and to have attacked the interests of the State, more particularly to that organ of State power, the Police Force."

His Honour continued as follows (at 6):

"The Tribunal was seeking to determine whether Y would be looked upon merely as a campaigner against corruption who was at risk of retribution by individual corrupt officials, or whether corruption was so much a part of government and of the exercise of State power in Brazil that opposition to it could be regarded as opposition to authority as it was organised and operated in Brazil. The Tribunal concluded that the views and actions of Y would have been likely to be regarded as contrary to the best interests of the State and particularly of its Police Force. Supportive of this finding was the fact that complaints to appropriate authorities served not to activate an inquiry but to bring down harm upon Y and his wife. The coercive power of the authorities appeared to be exercised against them, not against the corrupt officials."

Did the RRT Err?

As I have noted, the applicant's case before the RRT was that he satisfied the *Convention* definition of a refugee because he "had a well-founded fear of being persecuted for reasons of…political opinions". Since the applicant was not legally

represented (or, indeed, represented at all) and since he was clearly not entirely at home in the English language, it is not surprising that he did not formulate his contention in a legally precise manner. Nonetheless, it is clear from his application and the transcript of the proceedings that the applicant was making two distinct, albeit related assertions.

First, he claimed that by reason of his persistence in instructing and maintaining the prosecution of his cousin's killer he feared death at the hands of Marada. His claim was not limited to a fear that the killer himself would exact personal revenge. The applicant stated that he feared mistreatment by Marada which he described as "a particular social group". He explicitly said that he feared being killed by the "political man", presumably a reference to the leader of Marada or the Franjieh clan. At the hearing, the applicant described the political influence of Mr Franjieh and claimed that Mr Franjieh had enlisted the Lebanese police to threaten the applicant's family.

Secondly, the applicant claimed that the "source of the problem" was that he had not joined Marada. He made this claim during the hearing, apparently in response to the RRT Member's strongly expressed doubts as to whether the applicant's first claim could be characterised as fear of persecution for a *Convention* reason.

I have already referred to the lack of clarity in the RRT's somewhat cryptic reasons. The RRT did not expressly find that the applicant feared that he would be killed by Marada or the Franjieh clan, although it expressed itself satisfied that he feared the vengeance of the killer, who was still at large. However, it did find that he had "incurred the enmity of the Franjieh clan and the Marada" and that the head of those groups held a position of power in the Lebanese Government. The RRT also accepted that he had been threatened for his role in the court case and because he fought for justice over the murder of a family friend. It is clear that the RRT accepted the applicant's account of his role in the prosecution, the threats made against him and the nature of his fears. Certainly, there is nothing in the reasons to suggest that the RRT rejected any portion of the applicant's factual claims, other than his assertion that the threats stemmed in part from his failure to join or support Marada. It is also implicit in the RRT's approach that it considered that the applicant's fears of ill-treatment in Lebanon were well-founded.

The RRT did not refer in its reasons to the concept of imputed political opinion. Indeed, in its legal analysis, it did not refer to political opinion at all, beyond noting that political opinion is one of the five *Convention* grounds. Nor did the RRT address whether the applicant's fight for justice, by prosecuting his cousin's killer, was capable of being perceived, or was perceived, by Marada as a politically significant act: cf *Guo,* at 165 (FC), at 580-581 (HC).

I think it is clear enough why the RRT did not address this question. It perceived that the applicant's claim that he feared persecution for reasons of political opinion rested exclusively on the second of the grounds he put forward, namely, that he had been

threatened because he declined to support Marada. The RRT appears to have assumed that the fact (as it found) that the applicant had been threatened because "he fought for justice over the murder of a family member", could not have provided the foundation for fear of persecution for reasons of political opinion. The RRT's assumption that this was so reflected the stark alternative it put to the applicant at the hearing: were the threats made because the applicant failed to join Marada (in which case his claim might succeed) or because he represented a threat to Marada or the Franjieh clan by reason of his pursuit of justice (in which case it could not)?

In my view, the authorities to which I have referred show that, on the facts found by the RRT in its reasons, the RRT erred in its assumption that the threatened persecution of the applicant could not have been for reasons of imputed political opinion. As I have explained, the authorities support the proposition that, for *Convention* purposes, a claimant's political opinion need not be expressed outright. It may be enough that a political opinion can be perceived from the claimant's actions or is ascribed to the claimant, even if the claimant does not actually hold the imputed opinion. Moreover, the persecutor need not be a government or instrument of government, if the government is unable to protect the claimant from the persecutory threats (although in this case the RRT found that the head of the Franjieh clan held powerful political post in Lebanon).

I do not of course suggest that the RRT was bound to find that the applicant feared persecution for reason of his political opinion. In considering that factual question, the RRT would need to address a number of matters in respect of which findings have not yet been made. It would be relevant, for example, to consider the applicant's own motivation for his fight for justice, and whether that motivation could be characterised as embracing or necessarily implying a political opinion. It may be that his persistence in pursuing the prosecution of his cousin's killer, in the face of great danger, proceeded from a strong belief that no group, no matter how powerful, should be above the law. If so, it is likely to be open to the RRT to conclude that the applicant's conduct constituted, in effect, the expression of a political opinion.

It would also be relevant for the RRT to consider how the members of Marada or the Franjieh clan perceived the applicant's conduct. Did they regard it simply as a personal act of revenge by the applicant or an attempt by him to receive compensation? Did they see it as reflecting a view that their apparent immunity from the law should be ended or a deliberate threat to their (apparently) privileged political and legal status within Lebanon? Or did they see the applicant's conduct in some other way? Did they enlist the coercive powers of the State against the applicant? If so, why? If, for example, Marada or the Franjieh clan perceived (rightly or wrongly) the applicant's stance as a threat to their position of privilege and directed threats at him for this reason, the RRT might well find that the threats were made for reason of political opinion.

These are not necessarily the only factual issues requiring consideration in order to address the question of imputed political opinion. The point is that, on the RRT's

findings and the material before it, the RRT erred in excluding that question from its consideration.

An Alternative Submission

Ms Backman submitted, if all else failed, that the applicant could not rely on the imputed political opinion point, because he had not explicitly drawn it to the attention of the RRT. I must confess that I found this a rather surprising submission. If correct, it would mean that an unrepresented claimant, who established facts entitling him or her to the protection of the *Convention,* and who might be at risk of death if returned to the country of origin would fail on an application for review simply because he did not specifically alert the RRT to a legal issue it should in any event have appreciated. This would be so even if (as is commonly the case) the applicant spoke little or no English.

Ms Backman did not explain how her submission was consistent with s 420(2)(b) of the *Migration Act,* which requires the RRT to act according to substantial justice and merits of the case. Nor did she explain how it was consistent with the statement in *Handbook,* par 67, that it is for the examiner, when investigating the facts of the case, to ascertain the reason or reasons for the persecution feared and to decide whether the definition in the *Convention* is met in this respect.

The general principle is that a tribunal is not alleged to make out an applicant's case. However, there are circumstances where the tribunal may be obliged to undertake further factual inquiries, even though the applicant has not specifically requested that course: *Prasad v Minister for Immigration and Ethnic Affairs* (1985) 6 FCR 155 (Wilcox J), at 170; *Luu v Renevier* (1989) 91 ALR 39 (FC), at 49-50. It seems to me that, where an unrepresented applicant presents evidence to the RRT which, if accepted, is capable of making out the applicant's claim that he or she satisfies the *Convention* on a particular basis, the RRT may be required to consider the issue. Particularly is this so where the RRT accepts the substance of the applicant's account. I agree with the comments recently made by Branson J in *Bouianov v Minister for Immigration and Multicultural Affairs,* unreported, 26 October 1998, at 2:

"The respondent contends that the applicant did not articulate before the RRT a conscientious objection to military training and service. It is true that he did not expressly do so, and a decision-maker is not obliged to make a case for an applicant (Luu v Renevier (1989) 91 ALR 39). However, in my view, in appropriate cases, a decision-maker such as the RRT may be required to give consideration to whether evidence in fact given by an applicant might support an application on a basis not articulated by an applicant. This will more likely be found to be the case where an applicant is unrepresented, as the present applicant was before the RRT."

Ms Backman also referred me to the judgment of *Perampalam v Minister for Immigration and Multicultural Affairs,* unreported, 23 October 1998, Hill J. There, Hill J rejected one of the applicant's contentions on the ground that her case had not been argued on that basis before the RRT. However, it seems that the applicant was represented before the RRT. Moreover, the contention advanced by the applicant (that she was a member of a different social group than that suggested to the RRT) raised additional factual questions.

In my view, the fact that the applicant did not draw the doctrine of imputed political opinion to the attention of the RRT is not a basis for denying him relief.

Conclusion

The RRT's decision should be set aside and the matter remitted for determination according to law. The Minister should pay the applicant's costs.

I certify that this and the preceding sixteen (16) pages are a true copy of the Reasons for Judgment herein of the Honourable Justice Sackville

Associate:

Dated: 5 November, 1998

Solicitor for the Applicant:	Mr S Diab
	John Maait & Co
Counsel for the Respondent:	Ms F Backman
Solicitor for the Respondent:	Australian Government Solicitor
Date of Hearing:	27 October, 1998
Date of Judgment:	5 November, 1998