FEDERAL COURT OF AUSTRALIA

SAAU v Minister for Immigration & Multicultural Affairs [2002] FCA 626

No issue of principle

SAAU v MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS

S 209 OF 2001

O'LOUGHLIN J

CANBERRA (HEARD IN ADELAIDE)

17 MAY 2002

IN THE FEDERAL COURT OF AUSTRALIA	
SOUTH AUSTRALIA DISTRICT REGISTRY	S 209 OF 2001

BETWEEN:	SAAU APPLICANT
AND:	MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS RESPONDENT
JUDGE:	O'LOUGHLIN J
DATE OF ORDER:	17 MAY 2002
WHERE MADE:	CANBERRA (HEARD IN ADELAIDE)

THE COURT ORDERS THAT:

1. The Application be dismissed.

2. The Applicant pay the Respondent's costs, such costs to be taxed in default of agreement.

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

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JUDGE:	O'LOUGHLIN J
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PLACE:	CANBERRA (HEARD IN ADELAIDE)

REASONS FOR JUDGMENT

1 The applicant, who is a citizen of Iran, arrived in Australia on 13 April 2001 on a boat that was code-named "Jumbunna". He was then aged forty-eight. He is married and has three children, all of whom are living with their mother in Iran. Three months or so after his arrival, he lodged an application for a Protection Visa with the Department of Immigration and Multicultural Affairs ("the Department") pursuant to the provision of the *Migration Act 1958* (Cth) ("the Act"). That application was, however, unsuccessful; a delegate of the Minister for Immigration and Multicultural and Indigenous Affairs ("the Minister") refused to grant the Protection Visa as did the Refugee Review

Tribunal ("the Tribunal") who reviewed the decision of the delegate at the request of the applicant.

2 In an application for an order of review of the Tribunal's decision by this Court, which appears to have been prepared on the applicant's behalf by a person with a command of English but without legal qualifications, the applicant claims that he is aggrieved by the decision of the Tribunal. In his application he stated:

"1. I am extremely aggrieved at this unfair RRT decision. She could not understand that I have escaped from imminent violence.

2. The RRT member could not relate to my grave problems and did not understand them. As the tapes of my interview clearly show she repeatedly cut me off during the hearing such that I did not get a fair chance to explain my problems in, Iran fully."

The applicant claimed that if he were returned to Iran he feared that he would face persecution because of his past political, religious and social activities and contacts. He had three main areas of concern:

- the circumstances of his former employment;
- his matrimonial difficulties; and
- his conversion to Christianity.

In his accompanying affidavit, the applicant stated that he would forward his grounds of objection in due course. No such grounds have however been filed. The applicant gave evidence before the Tribunal; in addition, two witnesses gave evidence in his support. The first of them was also an applicant for a Protection Visa. He, like the applicant, claimed to have converted to Christianity since his arrival in Australia. The second was a Mr Abedi who had been contacted by the applicant before and after his arrival in Australia for information about Christianity.

employment

3 The Tribunal recorded in its reasons that the applicant had stated that, from 1989 until he left Iran, he had worked for a steel company in Isfahan. During that period of employment, his employer had sent him to Italy on a training course where he had learnt to speak Italian.

4 The applicant told the Tribunal that he had left Iran because he "faced many problems". The first of those problems related to his employment. He claimed that at his work, he used to interpret for the Italians who worked in the steel factory. He added that his employer's Hasarat [sic – Heresat] security section had disapproved of his social contact with his Italian co-workers and had questioned him about the matter, a rather unusual position considering that the Italians were obviously present in the country with the approval of the

authorities. Nevertheless, his employer did not approve of the fact that he had this social relationship. He was told him to cease fraternising with the Italians. He declined to do so and two or three months later he was told by the authorities that if he continued to have contact with the Italians his position in the company would be changed. He did not change his habits and he was transferred to another section where there were members of the Herasat. He was reported for not fasting and he was threatened with dismissal for not observing the religious code of conduct. He claimed that he was demoted by being transferred from Isfahan, where he and his family lived, to Bandar Abbas. He said that he was depressed and distressed because of this demotion as it meant travelling back and forth to visit his family. The applicant said that eventually he returned to Isfahan even though he was told that there would not be any work available for him with the steel company. However, he spoke to his manager who was able to obtain relief work for the applicant but not a permanent position. This situation continued for several years until about a year before his arrival in Australia when he was told discreetly to resign; he did not do so however. He also complained that his plans to study at the Isfahan University at night were disrupted when he was denied permission to continue with his studies because of his bad record with the Herasat. In addition, he recorded matters of complaint dating back to his school days, none of which, so it would seem to me, would have had any affect on the Tribunal's attitude to his application.

matrimonial

5 The applicant has had, on any standards, a tumultuous marriage. He said that he had religious disagreements with his wife who was a university graduate in Theology. Although he had told the Tribunal that he was a Muslim, in a statement that accompanied his application to the Tribunal, the applicant asserted that he did not accept the Islamic regime in Iran because he did not believe that religion should be used as a cover for corruption and persecution of Iranian citizens. The applicant spent much time discussing in his statement the matrimonial difficulties that he faced with his wife, mainly because of their fundamental religious differences. He concluded his statement by saying that if he were to return to Iran he would be imprisoned as soon as he arrived because the authorities would know that he had left Iran illegally before the resolution of his matrimonial litigation with his wife.

religion

6 Subsequent to his interview by the Minister's delegate, the applicant produced material to the effect that he had been regularly attending Christian church services since his arrival in the Woomera Immigration Reception and Processing Centre and that he was scheduled to be baptised in the near future. Documentary material supporting his claim of conversion to Christianity were also supplied. The Tribunal recorded in its reasons that the applicant had agreed that he had not mentioned anything about his interests in Christianity when lodging his application for a Protection Visa or when first interviewed by the Minister's delegate. The first indication of his interest in

Christianity was in a letter that he sent to the Department after his first interview. The applicant told the Tribunal that he had not made any claim in relation to Christianity when he arrived in Australia because he did not want "to rush into accepting Christianity without properly investigating it". However, contrary to that assertion, he elsewhere acknowledged to the Tribunal that he had told his wife before he left Iran that he had converted to Christianity.

the tribunal's findings

7 The Tribunal summarised the applicant's claims in its findings and reasons. It acknowledged that the applicant had claimed that he feared that he would face persecution if he were returned to Iran because of the problems that he had in the work place, because of his matrimonial problems, and because of his claimed conversion to Christianity.

8 The Tribunal was aware of the difficulties that it faced when making findings of fact and assessing the credibility of an applicant. It said:

"When assessing credibility, the Tribunal must be sensitive to the difficulties often faced by asylum seekers and should give the benefit of the doubt to those who are generally credible, but unable to substantiate all of their claims. However, the Tribunal is not required to accept uncritically any and all allegations made by an applicant. In addition, it is not necessary for the Tribunal to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out."

9 After quoting authorities of this Court in support of the proposition contained in the quoted passage, the Tribunal also reminded itself of the need to make allowance for the possibility that the applicant's claim might be true:

"If the Tribunal makes an adverse finding in relation to a material claim made by an applicant, but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true."

See *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220.

10 Mindful of these cautions, the Tribunal nevertheless concluded that "significant aspects of the applicant's evidence lack credibility". The Tribunal thereafter proceeded to list the matters of concern which led to it forming such an unfavourable assessment of the applicant's evidence. It referred to his avoidance in answering some questions and to answers which, on other occasions, were non-responsive. It emphasised that the main focus of his claim had shifted to his supposed conversion to Christianity after his interview with the delegate. As to that the Tribunal said:

"In my view, the timing of this particular claim and the manner in which it was made are problematic and adversely affect the applicant's credibility. Overall

I do not find the applicant's evidence concerning his claim to conversion to Christianity to be persuasive."

employment

11 The Tribunal accepted that the applicant had been employed in the manner to which reference has already been made and that he had been sent to Italy to undertake training. The Tribunal also accepted that on his return to Iran the applicant cultivated social relationships with some of his Italian co-workers. Furthermore, it accepted that he was warned by the authorities against pursuing such relationships and that he disregarded those instructions and was, as a consequence, transferred to Bandar Abbas. Nevertheless, even though the Tribunal accepted these matters and further accepted that the applicant was unhappy with his transfer, it noted that he remained in the employment of the company until his departure from Iran – this being some five years after he returned to Isfahan from Bandar Abbas. In that period, he continued to be remunerated, albeit, at a lower rate. The Tribunal concluded, and in my opinion correctly so, that the act of being transferred in his employment, being paid at a lower rate and being refused leave to finish his university course did not constitute such "**serious harm"** (as defined in subs 91R(2) of the Act) as to amount to persecution. These complaints and these troubles, irrespective of their intensity may have been matters of grave concern to the applicant but they could not possibly amount to persecution. Even if they did constitute "persecution", it is difficult to see how it could have been persecution for a convention reason.

matrimonial

12 The Tribunal accepted that the applicant had marriage difficulties with his wife and that their conflict had resulted from her strong religious convictions and her desire to have the applicant practice the Islamic faith.

13 A major aspect of the applicant's evidence had centred upon his wife's claim against him for what he described as her "dowry". The Tribunal noted that the word "dowry" was inappropriate. It said that the word "dowry" actually refers to property which is brought into a marriage by a wife, and that the more accurate term for what the applicant was describing was "bride price"; in Iran this is referred as the *Mehr*. The Tribunal noted that the independent evidence that it had obtained indicates that a woman in Iran is legally entitled to claim her *Mehr* (the amount of which is set out in the marriage contract) at any time after the marriage is consummated. The applicant stated that the *Mehr* is an Islamic obligation and the Tribunal accepted that that was the case. It would seem that the applicant's wife had lodged a complaint with the court asking for her *Mehr*, which the applicant could not pay. As a consequence, he faced imprisonment. His father had put up the deeds to his house as surety to keep the applicant out of prison and to give him time to pay. Friends, at the applicant's request, had replaced the deeds at the court with false deeds and the originals had been returned to his father. He submitted that if he returned

to Iran, he would be imprisoned because he left Iran without permission pending the resolution of his case.

14 The Tribunal did not consider that the religious origins of the *Mehr* were relevant. It noted that access to the *Mehr* was a legal entitlement which could be enforced in the courts. The Tribunal went on to say:

"In my view, the failure of the applicant to pay his wife what she was legally entitled to under their marriage contract, as well as the substitution of false documents for those that had been lodged with the court as a security, are breaches of laws of general application."

15 The Tribunal was prepared to accept that the applicant's wife had approached the relevant Court in Iran in relation to their matrimonial problems and that, as a consequence of this, the applicant was referred to various counsellors. However, as the applicant acknowledged, he "passed" the counselling sessions and the only adverse consequence was that he was ordered to pay a fine. The Tribunal was not satisfied that the process that the applicant underwent as a result of his wife's approach to the court, or the outcome, in terms of the fine that was imposed on him, was "**serious harm"** of a nature sufficient to amount to persecution.

16 I agree with the conclusion which the Tribunal reached that the matrimonial laws of Iran are laws of general application and that they cannot be elevated, as the applicant would have it, to persecutory conduct. These complaints and fears could not amount to persecution for a convention reason. Any difficulties that he might face would be because he had breached laws of general application to citizens of Iran.

religion

17 The Tribunal dismissed the applicant's claimed conversion to Christianity, describing it as an opportunistic attempt to fit himself within the definition of a refugee. The Tribunal would not accept that the applicant was a genuine convert. The Tribunal accepted that the applicant did not believe in, or practise the Islamic faith, including the time when he was in Iran. However, neither the applicant's evidence nor the independent evidence indicated that he would be subjected to such serious harm as to amount to persecution if he were to return to Iran. In coming to that conclusion, the Tribunal recited the relevant facts and the inconsistencies in the applicant's evidence on the subject. I cannot fault the Tribunal's reasoning.

18 The applicant did not assert any error of law or fact in his grounds of review and I, for my part, have not been able to locate any. It is not therefore necessary to consider the regime which is now contained in Pt 8 of the Act as enacted by the *Migration Legislation Amendment (Judicial Review) Act 2001* (Cth) which commenced on 2 October 2001. In my opinion, this is sufficient to conclude that the application should be dismissed with costs.

I certify that the preceding eighteen (18) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice O'Loughlin.

Associate:

Dated: 17 May 2002

The Applicant appeared in person	
Counsel for the Respondent:	Dr MA Perry
Solicitor for the Respondent:	Sparke and Helmore
Date of Hearing:	9 April 2002
Date of Judgment:	17 May 2002