FEDERAL COURT OF AUSTRALIA

WAEZ of 2002 v Minister for Immigration & Multicultural & Indigenous Affairs [2002] FCAFC 341

MIGRATION – judicial review – refugees – application for review of refusal to grant visa – claim of well-founded fear of persecution due to membership of a particular social group – appellant citizen of Iran – family's lands seized by State Oil Company – appellant and members of family resisted seizure – RRT found that appellant will likely face criminal charges and persecution if returned to Iran, but that such persecution would not be for a Convention reason as it would be pursuant to a law of general application – RRT had no evidence of what particular offence or offences appellant may have committed under Iranian law - whether RRT erred in that there was no evidence or other material to justify the making of its decision – whether RRT based its decision on the existence of a particular fact and that fact did not exist – whether RRT failed to interpret or apply correctly the relevant law – whether RRT failed to address whether appellant's family is a particular social group

Migration Act 1958 (Cth) ss 91R, 91S, 476(1)(b), 476(1)(c), 476(1)(e), 476(1)(g), 476(4)(b)

Aala v Minister for Immigration & Multicultural Affairs [2002] FCAFC 204 followed

Minister for Immigration & Multicultural Affairs v Sarrazola (2001) 107 FCR 184 referred to

Applicant A v Minister for Immigration & Ethnic Affairs (1996-1997) 190 CLR 225 referred to

Wang v Minister for Immigration & Multicultural Affairs (2001) 179 ALR 1 referred to

Chen Shi Hai v Minister for Immigration & Multicultural Affairs (2000) 170 ALR 553 referred to

Minister for Immigration & Multicultural Affairs v Rajamanikkam (2002) 190 ALR 402 referred to

Chan v Minister for Immigration & Ethnic Affairs (1989) 169 CLR 370 referred to

Minister for Immigration & Ethnic Affairs v Guo (1997) 191 CLR 559 referred to

Minister for Immigration & Multicultural Affairs v Sarrazola (1999) 95 FCR 517 referred to

WAEZ OF 2002 v MINISTER FOR IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS

W 57 OF 2002

LEE, HILL & HELY JJ

8 NOVEMBER 2002

PERTH

IN THE FEDERAL COURT OF AUSTRALIA	
WESTERN AUSTRALIAN DISTRICT REGISTRY	W 57 OF 2002

ON APPEAL FROM A JUDGE OF THE FEDERAL COURT OF AUSTRALIA

BETWEEN:	WAEZ OF 2002 APPELLANT
AND:	MINISTER FOR IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS RESPONDENT
JUDGES:	LEE, HILL & HELY JJ
DATE OF ORDER:	8 NOVEMBER 2002
WHERE MADE:	PERTH

THE COURT ORDERS THAT:

1. The appeal be allowed.

2. The orders of the learned primary Judge made on 8 February 2002 be set aside and in lieu thereof it be ordered that:

"1. The decision of the Refugee Review Tribunal made on 17 September 2001 be set aside and the matter be remitted to the Tribunal for determination according to law.

2. The respondent pay the applicant's costs".

3. The respondent pay the appellant's costs.

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

IN THE FEDERAL COURT OF AUSTRALIA	
WESTERN AUSTRALIAN DISTRICT REGISTRY	W 57 OF 2002

ON APPEAL FROM A JUDGE OF THE FEDERAL COURT OF AUSTRALIA

BETWEEN:	WAEZ OF 2002 APPELLANT
AND:	MINISTER FOR IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS RESPONDENT

JUDGES:	LEE, HILL & HELY JJ
DATE:	8 NOVEMBER 2002
PLACE:	PERTH

REASONS FOR JUDGMENT

THE COURT:

1 The appellant is an Iranian citizen of Arab ethnicity. In November 2000 he entered the Australian "migration zone" whilst not the holder of a visa issued under the *Migration Act 1958* (Cth) ("the Act"). On 12 February 2001 he lodged an application for a protection visa with the Department of Immigration & Multicultural Affairs. That application was refused by a delegate of the Minister on 9 April 2001. On 10 April 2001 he applied to the Refugee Review Tribunal ("the RRT") for review of that decision. On 17 September 2001 the RRT affirmed the decision not to grant a protection visa to the appellant. On 24 September 2001 the appellant lodged an application in this Court for a review of the decision of the RRT. That application was dismissed by the primary Judge on 8 February 2002. This is an appeal against that order of dismissal.

2 The RRT accepted that the appellant had truthfully stated to the RRT the circumstances which led to his departure from Iran. Those circumstances are as set forth in the following paragraphs which have been largely taken from the reasons for decision of the RRT and of the primary Judge.

3 The appellant's family are Arab. They live in the rural part of the Khozestan region in Iran. The family depended upon agriculture for their living. The family inherited four hectares of land from the appellant's grandfather. Farming this land was their sole source of income.

4 In 1998-1999 two hectares of the land were acquired by the Iranian National Oil Company ("the Oil Company") without adequate compensation, and against the wishes of the appellant and his family. The family made several attempts, by appealing to the authorities, to prevent the Oil Company seizing their land and commencing oil operations.

5 As part of this process, a meeting was held at the provincial Governor-General's office at which the appellant and his father explained their concerns. The Governor-General told them he could not do anything for them, that they had no rights, and that the lands "should be handed back to the regime". The appellant pointed out that they held the deeds to the land. His father told the Governor-General that their rights were being trampled on. The Governor-General became very angry and pushed the appellant's father out of

his office and insulted him. The appellant also became angry and ended up assaulting the Governor-General. Security officers were called. The appellant was struck in the face with a gun and knocked unconscious. He woke up in hospital and after treatment he was arrested and jailed from 30 December 1998 to 1 February 2000. During this time his father suffered a stroke which left him paralysed.

6 The RRT accepted that the appellant was sentenced to a relatively lengthy period of imprisonment as a result of this incident. This was due to the fact that an assault was perpetrated on the person occupying the office of Governor-General and not because of the seriousness of the physical assault itself. However, the RRT was not satisfied that the ethnicity or religion of the appellant was a factor in his being charged or sentenced. Nor was it satisfied that he was seen, through the circumstances of the assault, to be a political dissident.

7 Following the appellant's release from jail he went back to work on the remaining two hectares of the family's land. The Oil Company, however, then sent correspondence seeking to acquire the remaining two hectares. The appellant and one of his brothers promised themselves that they would not allow the Oil Company to take the remaining land from them. The Oil Company brought earthmoving vehicles in to commence levelling the land and the appellant and his brother, who were working on the land at the time, argued with the Oil Company security guards, who would not listen to them. The appellant then obtained a hunting gun and started firing shots into the air. The guards and the drivers were frightened and moved away in their light vehicles. The appellant and his brother started to burn the heavy vehicles and then ran home. That night security forces (the Ettela'at) came to their home and started firing into the air. The appellant's oldest brother began firing with his hunting gun. One of the brothers was shot, and the appellant then became very worried and fearful because he realised the situation was getting out of control. He fled to his uncle's house and explained the situation to him. His uncle went back to the appellant's home and then returned and told him that one of his brothers had been killed and the other was seriously injured and had been taken to hospital. The appellant said that his family agreed that if he were captured he would be executed as an enemy of the regime who had attacked security forces. The best he could expect would be a lashing and a lengthy jail term. He had to escape the vengeance of the security forces and flee the country.

8 The RRT accepted that the appellant's actions, some months after he was released from his jail sentence, in chasing with a rifle the Oil Company representatives off the remaining two hectares with his brother and then doing property damage to the Oil Company vehicles, flowed from their anger and desperation in seeing a source of their livelihood being unfairly and unlawfully, in their eyes, taken away from them. The RRT accepted the evidence that they were not thinking properly when they acted as they did and that they were very upset about losing their land. The RRT accepted that this land was extremely important and valuable to them, being an important source of income and having been in their family for generations, and that their family

honour was at stake. They did what they did to protect their land and their honour. The RRT accepted that it was these circumstances that led to the security authorities approaching the appellant's home to arrest the appellant and his brother, Hakim.

9 The RRT did not accept that the Iranian authorities would attribute a dissident political opinion to the appellant or his family on the facts found by the RRT. The RRT stated that the authorities would be aware that the appellant was an unsophisticated, illiterate, peasant farmer. There was insufficient evidence to convince the RRT that the appellant's ethnicity or religion, or that of his family, had anything to do with the Oil Company's actions or the position later adopted by the Governor-General and the Ministry of Justice, to which the appellant's elder brother unsuccessfully complained. Nor was the RRT satisfied on the evidence that on return to Iran the authorities would persecute the appellant for reason of his membership of a particular social group, by virtue of his ethnic Arab background, his religion or an imputed dissident political opinion. The RRT was unable on the evidence to make a positive finding whether the actions of the Oil Company in taking the appellant's family's land were legally or illegally undertaken. However, the RRT concluded that the only reason that the appellant's family's land was taken was that the government needed it to explore for oil.

10 The RRT found that on return to Iran, it is likely that the appellant will face interrogation and physical mistreatment, possibly by the Ettela'at, and will most likely be charged with a criminal offence or offences, although the RRT could not be certain what particular offence or offences the appellant may have committed under Iranian law, if any. Nonetheless, the RRT was satisfied on the evidence that if the appellant were charged with a criminal offence or offences, he would possibly face a lengthy jail term, and may even face the death penalty, for his actions in seeking to prevent his family's lands from being taken and used for oil exploration, the serious property damage he caused and because he or his family resisted arrest.

11 The RRT was not satisfied on the evidence that the appellant would be perceived by the Ettela'at, or other Iranian security authorities, as a political dissident because of his activities. The RRT considered that his actions would be perceived by the Iranian authorities as criminal responses to the Oil Company's seizure and use of his family's land. Whilst the RRT did not have sufficient evidence as to the particular law under which the appellant was likely to be charged by the Iranian authorities, it nonetheless came to the conclusion that the appellant faced punishment for criminal offences according to Iranian criminal law.

12 The RRT was not satisfied that the Iranian authorities would selectively enforce their criminal laws against the appellant on his return to Iran. The RRT noted that the appellant had attracted adverse attention from law enforcement authorities only because he assaulted the Governor-General, expelled Oil Company representatives by firing his rifle in the air and

set fire to their vehicles and because he later avoided arrest when the Ettela'at came to his home.

13 The RRT said:

"The Tribunal does not have any convincing evidence before it that the likely enforcement of criminal laws against the applicant will be for the purpose of oppressing an Iranian of ethnic Arab descent, being a member of a particular social group in Iran, or because of his religion or any imputed political opinion. In these circumstances the Tribunal is not satisfied that the applicant is in genuine fear of persecution for a Convention reason."

14 The appellant left Iran on his own Iranian passport, although his uncle may have facilitated his departure from the airport through bribery. The RRT accepted, on the country information available, that if the Iranian authorities discover that the appellant departed from Iran as a fugitive he may receive a jail term. However, the RRT considered that the application of this law against the appellant would not constitute persecution under the Convention as it is a law of general application and would not, on the facts found by the RRT, be enforced by the Iranian authorities in a discriminatory way against the appellant.

15 Country information available to the RRT suggested that the mere act of applying for asylum abroad is not an offence under Iranian law, and in the circumstances, would not be likely to give rise to much more than verbal harassment.

16 The RRT concluded that the appellant was in genuine fear of persecution if returned to Iran by reason of the circumstances which are outlined above. However, taking into account all of his circumstances, the RRT was not satisfied that there was a real chance that he would suffer persecution under the Convention if so returned. Nonetheless, the RRT concluded its consideration of the matter with the following observations:

"The facts found by the Tribunal in this matter establish that the applicant is likely to face on return to Iran physical mistreatment, criminal charges and a very substantial jail term or, possibly, execution for his conduct in chasing off the family lands Oil Company representatives with his rifle, damaging the Oil Company's property, resisting arrest and fleeing the country. His conduct and that of his deceased brother Hakim, which the family recognised was a mistake, was motivated at a time of high emotion, by strong anger at the treatment he and his family had suffered and the unfairness of the offer of compensation, the loss of a valuable asset and source of income and by family honour. Arising out of their attempt to keep their lands, there are a number of tragic circumstances that have befallen his family. The applicant's brother was killed by security forces, another brother is in jail for 20 years, his father has suffered a stroke, resulting in partial paralysis of his body, and the applicant, a young man, has suffered a year in jail and fled his country and can expect severe repercussions on return to Iran. The Tribunal draws these matters to the attention of the Minister for his consideration."

The primary Judge's decision

17 The grounds of review on which reliance was placed at first instance are as follows:

"6. Pursuant to section 476(1)(e) of the Act, the Tribunal's decision involved an error of law, being an error involving an incorrect interpretation of the applicable law or an incorrect application of the law to the facts as found by the Tribunal, whether or not the error appears on the record of the decision.

7. In particular –

(a) the Tribunal found (Court Book, p 133) that the Applicant 'is in genuine fear of persecution on return to Iran';

(b) the Tribunal found (p 130) that the Applicant, on return to Iran, 'will most likely be charged with a criminal offence or offences' and was satisfied on the evidence that, if the Applicant is so charged, 'he will possibly face a lengthy gaol term, and may even face a death penalty';

(c) the Tribunal found (p 133) that the Applicant, on return to Iran, is likely to face 'physical mistreatment, criminal charges and a very substantial gaol term or, possibly, execution';

(d) the Tribunal stated (p 130) that it was 'not satisfied on the evidence what particular offence or offences the Applicant may have committed under Iranian law, if any';

(e) despite that express finding in ground 7(d) above, nevertheless the Tribunal said (p 130) that, in its view, the Applicant's actions would 'be criminal offences with punishment according to criminal law';

(f) the Tribunal held (p 132) that because the Applicant's genuine fear of persecution arose from a criminal offence, or offences, it was not satisfied that 'the Applicant is in genuine fear of persecution for a Convention reason'.

8. The Tribunal erred in law in holding that the Applicant's well-founded fear of persecution was not for a Convention reason, and in finding that the fear of persecution was not attributable to the Applicant's –

(a) race;

(b) religion;

(c) membership of a particular social group; or

(d) political opinion.

9. The Tribunal erred in law in not holding that the Applicant's well-founded fear of persecution was for reasons of –

(a) race;

(b) religion;

(c) nationality;

(d) membership of a particular social group, or

(e) political opinion.

10. Pursuant to section 476(1)(g) of the Act, there was no evidence or other material to justify the making of the decision in ground 8 above.

11. Pursuant to section 476(4)(a) of the Act, the Tribunal was required by law to reach the decision that the well-founded fear of persecution was not for a Convention reason only if it was established that that persecution was for a reason which was not a Convention reason and there was no evidence or other material (including facts of which the Tribunal was entitled to take notice) from which the Tribunal could reasonably be satisfied that the non-Convention reason was satisfied. The Tribunal's express finding in ground 7(d) above shows that there was no evidence or other material which established to the Tribunal's satisfaction that a non-Convention reason existed.

12. Pursuant to section 476(4)(b) of the Act, the Tribunal based its decision on the existence of a particular fact, namely that the Applicant's well-founded fear of persecution was attributable to his criminal offence or offences, and that fact (namely, the criminal offence or offences) did not exist, as per the express finding stated in ground 7(d) above.

13. Pursuant to section 476(1)(e) of the Act, the Tribunal, in reaching its decision, failed to give proper account to relevant considerations in the exercise of its power, namely –

(a) the contents of the letter of 31 January 2001 from Dr Al Jabiri & Associates titled 'General Submission on behalf of Iran Asylum-Seekers in Detention' (pages 46-60); and

(b) the contents of the letter of 9 July 2001 from Dr Al Jabiri & Associates titled "Post-Hearing submission on Behalf of Mr Iraj Navasseri from Iran – in Detention' (pages 85-92)."

18 The reasons given by the primary Judge for rejecting those grounds are as follows:

"**The Hazard on Refoulement**

17 The first issue raised by Mr O'Connor QC, who represented the applicant on a pro bono basis, was reflected in pars 6 and 7 of the grounds of review. The core of the complaint lay in the Tribunal's alleged failure to identify the criminal offence or offences which, in its opinion, the applicant had committed in breach of Iranian law. It could not therefore, it was said, have been satisfied that the applicant had committed any offence against Iran's criminal laws.

18 The Tribunal finding that the discharge of fire arms and the setting alight of earth moving equipment would be criminal offences under Iranian law was a finding of fact. It was plainly open to the Tribunal to determine that such acts would be punishable without having to specify which law had been breached or precisely how the offences might be characterised. The threatening discharge of a firearm to deter civil workers and the deliberate destruction of property are matters which are likely to be contrary to the criminal law in most organised societies which have such laws. While it may be said that the Tribunal's finding was inferential, it was a finding it was entitled to make. There is no basis upon which the Court can review that finding. There is no substance in these grounds of review.

Persecution for a Convention Reason

19 Grounds 8 and 9 can be considered together. These were really by way of direct challenge to the Tribunal's fact findings. Counsel for the applicant referred to country information in a general submission to the Court particularly in reference to the position of Khozestan Arabs within Iran. It was said that the Tribunal had failed to give proper regard to the contents of the general submission and had looked at the incidents which precipitated the applicant's departure from Iran in isolation from reality. The applicant however had advanced no case which would support a finding that there was a real chance of persecution for any of the Convention reasons mentioned. Given the Tribunal's findings that the persecution faced by the applicant on his return to Iran would be the result of his own criminal acts in Iran, there is no room for the finding that such persecution would be for a Convention reason.

20 In his supplementary statement to the Tribunal the applicant identified the disadvantaged position of Khozestan Arabs. At no time, however, did he suggest that the persecution which he would face if returned to Iran had any connection with his race or religion or political opinions. His complaint was that "…I will not be treated humanly or in accordance to (sic) the law in Iran. I will be treated according to the harsh Ettela'at regulations where persecution and tortures are the most usual ways they treated those who they considered to be dissenters". There is no error disclosed in the Tribunal's reasons in this respect.

Remaining Grounds

21 Paragraphs 10, 11 and 12 revisit in different guise the matters raised in the earlier grounds. Paragraph 13 alleges a failure on the part of the Tribunal "to give proper account to relevant considerations in the exercise of its power". To the extent that this is a ground about the weight given to particular considerations and to particular material before it, the Tribunal's decision on these matters is one for it and not for judicial review.

Conclusion

22 For the preceding reasons the application is not made out and will be dismissed."

The appeal to this Court

19 The appellant's grounds of appeal contained in his Notice of Appeal dated 14 February 2002 are as follows:

(a) there was no evidence or other material to justify the making of the decision that the appellant did not have a well-founded fear of persecution by reason of his political opinion, real or imputed, if he returned to Iran within the reasonably foreseeable future; and

(b) the decision involved an error of law, being an error of law involving the incorrect interpretation of the applicable law or an incorrect application of the law to the facts as found by the RRT, or both.

20 The appellant was granted leave to amend the Notice of Appeal to add a further ground of appeal, being:

(c) that the RRT and the primary judge erred in that there was no evidence or other material to justify the making of their decisions (s 476(1)(g)), and in particular the RRT and the primary judge based their decisions on the existence of a particular fact and that fact did not exist (s 476(4)(b)).

21 The appellant submits that the RRT's decision that the appellant is not a refugee was based upon its finding that whilst there is a real chance that the appellant will be executed if returned to Iran, that is because he had engaged in criminal conduct which might be punished by execution under Iranian criminal law, being a law of general application. In the RRT's assessment, the case is one in which the appellant faces punishment in Iran for his criminal actions, rather than persecution for a Convention reason. The appellant submits that the RRT's assessment in this respect is infected by reviewable error pursuant to the former s 476(1)(g) of the Act considered in the light of the former s 476(4).

22 The appellant placed considerable reliance upon the decision of the Full Court in *Aala v Minister for Immigration & Multicultural Affairs* [2002] FCAFC 204, which was given after the dismissal of the present application at first instance. In *Aala* the RRT found that the appellant in that matter faced a real chance of being executed if returned to Iran, but also found that execution would be pursuant to a law of general application, and on that basis the application for a protection visa was rejected. The application for judicial review of that decision was also dismissed. Fresh evidence was adduced on the appeal from an expert in Iranian law, Dr Esmaeili, that ordinarily the offences committed by the appellant would be tried in the "common courts" where the death penalty would not be imposed. If the appellant were executed for the commission of those offences, it would be by order of the Revolutionary Courts under an Iranian law stipulating the death penalty for an economic offence committed with an "anti-government intention" otherwise the case would not be fixed in the Revolutionary Courts. The Full Court held that such a law is not a law of general application. It is targeted at those whose actions are perceived to be politically motivated. Hence the appellant's fear of persecution was founded on his political opinion. The Full Court held that the primary Judge's conclusion that there was no room for the application of s 476(1)(g) of the Act could not stand in the light of the fresh evidence of Dr Esmaeili.

23 In the present case, the RRT had before it "country information" in relation to the operation of the Iranian judicial system. That information was to the effect that the traditional court system is not independent and is subject to government and religious influence. It serves as the principal vehicle of the State to restrict freedom and reform in the society. There are several different court systems. The two most active are the traditional courts, which adjudicate civil and criminal offences, and the Islamic Revolutionary Courts. The latter were established in 1979 to try offences viewed as potentially threatening to the Islamic Republic, including threats to internal or external security, narcotics crimes, economic crimes (including hoarding and overpricing), and official corruption. Trials in the Revolutionary Courts are notorious for their disregard of international standards of fairness. According to the Department of Foreign Affairs & Trade ("DFAT") Country Profile on Iran dated March 1996, since it was established the Revolutionary Court has issued thousands of death sentences and tens of thousands of prison terms.

24 The RRT also had before it "country information" to the effect that the death penalty is still in wide use in Iran. The DFAT Country Profile states that "Traditional Islamic (Sharia) laws allow for the death penalty in certain circumstances". As noted above, there was no specific evidence before the RRT as to the particular offences under Iranian law which the appellant had committed, or as to the punishment prescribed by Iranian law for such offences.

25 Dr Esmaeili was called to give evidence on the hearing of this appeal. It is implicit in his evidence that the appellant's conduct as found by the RRT involved the commission by the appellant of an offence or offences under Iranian law, but he did not identify the particular offence or offences

involved. In Dr Esmaeili's opinion the traditional courts would not impose a death penalty for the unspecified offence(s) which the appellant had committed, but if the offence was committed with the intention of harming the government, or by way of opposition to the government, or if the consequences of the activities are so great "that they create a kind of chaos for significant problems for the government or for the regime", then the matter will be referred to the Revolutionary Court which may impose the death penalty.

26 The effect of Dr Esmaeili's evidence in the present case is that under Iranian criminal law the appellant's conduct involved the commission of offences which would not ordinarily be punishable by death, but in special circumstances the death penalty might be imposed. If the offences were committed with the intention of harming the government or the regime, or if the scale of the offences is such as to result in public chaos, then special circumstances exist such that the death penalty may be imposed.

27 In Dr Esmaeili's opinion, one would not expect the Ettela'at to be involved in the investigation of an ordinary criminal offence which would be tried in the traditional courts. If the Ettela'at is involved in the investigation of a crime, that means that the crime might have some security implication, and it might go to the Revolutionary Courts. It will be recalled that it was the Ettela'at, rather than the police, who visited the appellant's family on the night that the appellant's brother was shot (see [7] above).

28 A person may be motivated to persecute another for more than one reason. It is sufficient to establish refugee status that one of the reasons for which persecution is feared is for a Convention reason: *Minister for Immigration & Multicultural Affairs v Sarrazola* (2001) 107 FCR 184.

29 The enforcement of a generally applicable law does not ordinarily constitute persecution: *Applicant A v Minister for Immigration & Ethnic Affairs* (1996-1997) 190 CLR 225 at 258-259 (McHugh J); *Wang v Minister for Immigration & Multicultural Affairs* (2001) 179 ALR 1 at [50] – [68]. But where the punishment is disproportionately severe, that can result in the law in that case being persecutory for a Convention reason: *Wang* (supra) at [63]. Laws which apply only to a particular section of the population are not properly described as laws of general application: *Chen Shi Hai v Minister for Immigration & Multicultural Affairs* (2000) 170 ALR 553 at [19].

30 In the present case the RRT referred to these authorities in the context of considering whether enforcement of a law of general application would ordinarily amount to persecution. Whilst the RRT did not say so in express terms, the essential thrust of the RRT's reasons is that whilst the appellant is at risk of execution if returned to Iran, the Iranian law under which the appellant may face execution is a law of general application. So much is implicit in the RRT's reasoning process extracted at [12] above.

31 There was no evidence before the RRT that the appellant's conduct exposed him to the risk of imposition of the death penalty by virtue of a law

having general application. The RRT was unable to say under what law the appellant was likely to be charged. For the reasons given by the primary Judge it may have been open to the RRT to infer that the appellant's conduct was likely to be contrary to the criminal laws of Iran in a general sense, but there were no materials before the RRT which would sustain a conclusion that exposure to the risk of execution by reason of that conduct was by virtue of a law of general application.

32 On the evidence of Dr Esmaeili, the possibility of execution only arises if the purpose or the effect of the appellant's criminal conduct was to undermine the government or the regime, in which case the Revolutionary Courts could sentence the appellant to death. A law which operates in that way is either not a law of general application, because it applies only to persons who engage in what might loosely be described as anti-government activity, or because it provides for a disproportionately severe punishment when the offence is attended by that activity.

33 *Aala* (supra) at [49] establishes that a conclusion that there is a real chance of execution pursuant to a law of general application is a finding about a state of affairs, and is thus a finding of fact. The RRT's decision in the present case was based on the existence of that fact as its finding in that respect was critical to the decision reached: *Minister for Immigration & Multicultural Affairs v Rajamanikkam* (2002) 190 ALR 402. The appellant has adduced evidence from Dr Esmaeili which leads to the conclusion that the supposed fact does not exist. The ground of review provided for in s 476(1)(g) is thus established. It was submitted that we should not follow *Aala*, but it is a recent, and unanimous, decision of a Full Court given in circumstances very similar to the present, and we are not satisfied that it is obviously wrong.

34 The RRT's finding quoted at [13] above that the RRT did not have any convincing evidence before it that the likely enforcement of criminal laws against the appellant will be because of any political opinion imputed to the appellant is inextricably bound up with the RRT's conclusion that the appellant's exposure to the risk of execution flowed from the application of a law of general application. As that conclusion was infected by reviewable error the quoted finding does not provide an independent reason for the conclusion which the RRT reached. It does not deny the proposition that the RRT based its decision on the supposed fact that the risk of execution arises under a law of general application, nor does it indicate that there is not practical utility in remission of the matter to the RRT for reconsideration according to law.

35 In addition to the foregoing the appeal may also be upheld on grounds for review that arose under former ss 476(1)(b), (c) or (e) of the Act.

36 The RRT accepted authoritative material provided in the United States State Department's Country Reports on Human Rights Practices 2000 (Iran) to the effect that security forces such as Etela'at committed numerous serious human rights abuses including extra-judicial killings and summary executions, disappearances and wide-spread use of torture and engaged in repression by

arbitrary arrest and prolonged detention. Obviously such conduct could not be characterised as random or irrational abuses of power. The acts of the security forces gave effect to an assessment of what was required to perform the function of protecting the security of the state and the "revolution". Country information before the RRT instructed it that such agents of the regime acted with impunity and, indeed, with the tacit authority of a regime that suppressed ruthlessly any act of political dissent perceived to be involved in an affront or threat to the authority of the regime.

37 Proper interpretation and application of the relevant law as explained by the High Court in *Chan v Minister for Immigration & Ethnic Affairs* (1989) 169 CLR 379 and *Minister for Immigration & Ethnic Affairs v Guo* (1997) 191 CLR 559 at 571-575, required the RRT to consider the foregoing material and determine whether, if returned to Iran, the appellant faced a real risk of persecution at the hands of security forces for reason of imputed political opinion. Given that the RRT accepted that it was likely that if returned to Iran the appellant would face interrogation and physical mistreatment at the hands of security forces, including Etela'at, the RRT had to assess whether there was a real risk that that conduct by such an agency of a type described in the foregoing report may befall the appellant and cause him significant harm or detriment. This the RRT failed to do. By that omission the RRT failed to interpret or apply correctly the relevant law, failed to have regard to the correct question it had to determine, or failed to take into account considerations relevant to the proper determination of that question. Accordingly ground for review arose under s 476(1)(b), (c) or (e) of the Act. (See: *Minister for Immigration & Multicultural Affairs v Yusuf* (2001) 180 ALR 1 per Gleeson CJ at [10], McHugh, Gummow and Hayne JJ at [76]-[83]).

38 Finally, the materials before the RRT raised an issue as to whether the appellant would suffer persecution if returned to Iran by reason of his membership of a particular social group, namely his family. The land which the Oil Company wanted to exploit was family property, and the actions taken, including the shooting of the appellant's brother, were all directed at the appellant's family, for it was they who stood in the Oil Company's way.

39 The appellant's family may be a particular social group: *Minister for Immigration & Multicultural Affairs v Sarrazola* (1999) 95 FCR 517 (Full Court); *Minister for Immigration & Multicultural Affairs v Sarrazola* (2001) 107 FCR 184. Whether the family is a particular social group, and whether there was a real chance of persecution by reason of the appellant's family membership were issues which the RRT was required to address, but which were not addressed. That failure gives rise to a further reviewable error on the part of the RRT.

40 Reconsideration of this issue by the RRT will involve consideration of the effect, if any, of s 91R and s 91S of the Act which came into effect after the RRT's decision under review.

41 The appeal should be upheld, and the matter remitted to the RRT for reconsideration according to law.

I certify that the preceding forty-one (41) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Court.

Associate:

Dated: 8 November 2002

Counsel for the Appellant:	R K O'Connor QC, J J Hockley (*pro bono publico*)
Counsel for the Respondent:	A A Jenshel
Solicitor for the Respondent:	Australian Government Solicitor
Date of Hearing:	21, 26 August 2002
Date of Written Submissions:	12 September 2002; 1, 4 October 2002
Date of Judgment:	8 November 2002