IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY No. S160 of 2017

ON APPEAL FROM THE SUPREME COURT OF NAURU

BETWEEN:

YAU 026
Appellant

and

The Republic of Nauru
Respondent

REDACTED

SUBMISSIONS OF THE RESPONDENT

Filed on behalf of the Respondent by:

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PART I PUBLICATION

1. These submissions are in a form suitable for publication on the internet.

PART II ISSUES

2. Was the Supreme Court of Nauru correct to conclude that s 37 of the *Refugees Convention Act 2012* (Nr) had been repealed with effect from 10 October 2012, from which it followed that the Court did not need to consider the Tribunal's compliance with that provision (Ground 1, first limb)? Answer: Yes. Although there was some uncertainty regarding when the repeal of s 37 took effect pursuant to the *Refugees Convention (Derivative Status and Other Measures) (Amendment) Act 2016* (Nr), the repeal of that section with effect from 10 October 2012 was put beyond doubt by the *Refugees Convention (Amendment) Act 2017* (Nr), the enactment of which was drawn to the Court's attention before judgment in this matter. In view of the correctness of the Court's conclusion that s 37 had been repealed with effect from 10 October 2012, the respondent contends that no occasion arises for exercising the power to reverse or modify the judgment or order of the Court: see s 8 of the *Nauru (High Court Appeals) Act 1976* (Cth).

3. Was the Supreme Court correct to conclude that the Tribunal complied with the requirements of procedural fairness (Ground 1, second limb)? Answer: Yes. A critical issue for the Tribunal in evaluating the appellant's protection claims was the credibility of his claimed position on the executive committee of the Jatiotabadi Chatra Dal (**JCD**) in his local ward. In the course of putting to the appellant its concerns in this regard, the Tribunal gave him an opportunity to comment on his apparent conflation of membership of the JCD and holding an executive position within the party. The opportunity accorded to the appellant discharged the Tribunal's obligations of procedural fairness with respect to the general information to which it referred in its decision in this regard.

4. To the extent that it is necessary to decide the issue, did the Tribunal comply with its obligations under (repealed) s 37 of the Refugees Convention Act (Ground 1, third limb)? Answer: Yes.

5. Does it follow from the Tribunal's reliance on information in paragraph 24 of its reasons, without citing a source for it that the Tribunal made a finding for which there was no evidence (Ground 2)? Answer: The ground implicitly assumes that the absence of a reference to specific evidence in paragraph 24 would provide a basis for setting aside the Tribunal's decision on a no evidence ground. That assumption is misplaced. Further, and in any event, it would not follow from the absence of a citation that the Tribunal had no evidence, particularly having regard to the nature of the information and the store of specialised knowledge that members of the Tribunal build up over time.

6. Did the Supreme Court err in rejecting the appellant's claim that the Tribunal failed to consider an integer of his protection claims (Ground 3)? Answer: No. The claim in question was not squarely raised by the appellant; and, even if it was so raised, the appellant did not discharge the onus of proving that the Tribunal had not considered it. The Supreme Court was correct to conclude that the ground was without merit.

7. With respect to its conclusions on the previous ground, did the Supreme Court fail to provide adequate reasons (Ground 4)? Answer: By Ground 3, the appellant has taken issue with the substance of the Court's decision on this issue, and does not contend, by that ground, that he could not understand the Court's reasons. The respondent contends that, read in context, the reasons are adequate.

8. The Court's jurisdiction to hear and determine the appeal is not in issue: See ss 44 and 45 of the *Appeals Act 1972* (Nr); ss 5 and 8, and the Schedule, of the *Nauru (High Court Appeals) Act 1976* (Cth); *Ruhani v Director of Police* (2005) 222 CLR 489 at [10], [14] (Gleeson CJ), [49]-[51], [49]-[51] (McHugh J), [89], [108] (Gummow and Hayne JJ).

PART III SECTION 78B NOTICE

9. No notice under s 78B of the *Judiciary Act 1903* (Cth) is required.

PART IV FACTS

10. The appellant's summary of facts in paragraphs 7 to 12 of the written submissions filed on his behalf (**AWS**) is accurate. However, in order to evaluate the grounds further elaboration is required.

11. In his transfer interview, the appellant indicated that he feared persecution by reason of his actual political opinion. The appellant claimed that he was a supporter of the JCD and was part of a local union Council, in which capacity he was involved in inviting people to join the party, and attending meetings (CB 12). In a statement in support of his application to the Secretary for recognition of his status as a refugee (see s 5(1) of the Refugees Convention Act), the appellant claimed that he became a member of the Bangladesh Nationalist Party (**BNP**) in about 2007 or 2008 (CB 43 [6]). The appellant claimed that in door-knocking in different villages to encourage people to join the BNP, he came to the adverse attention of "[redacted]", a member of the Awami League (**AL**) who lived in a neighbouring village.

12. About six months after joining the BNP, the appellant claimed to have been tipped off that [redacted] was arranging to attack him and his friends at a location to which they were planning to travel on an Eid festival day. Although they changed their route, the appellant and his friends were still set upon and beaten until a respected local intervened and stopped the fighting (CB 44 [8]-[11]). The appellant claimed that following this incident, he was subject to several beatings by AL members, including on an occasion in 2013 when he was hospitalised (CB 45 [12]-[14]).

13. The appellant claimed that he feared being seriously harmed and/or killed in Bangladesh at the hands of AL members, including [redacted] (CB 45 [16]-[17]). He stated that his reasons for this fear were his political opinion in support of the BNP and his imputed and/or actual political opinion against the Awami League. Read in context, the basis of the appellant's claim to have had an imputed political opinion against the Awami League was his actual political opinion in support of the BNP, as the opposition party.

14. Following the Secretary's adverse determination of his application (ss 6 and 9 of the Refugees Convention Act), the appellant applied to the Tribunal for merits review of the Secretary's decision (s 31 of the Refugees Convention Act). In a further statement in support of that review application, the appellant took issue with the Secretary's finding (CB 60-61) that he did not have a sufficiently high profile in the BNP to attract the interest of Bangladeshi authorities or AL supporters (CB [5]-[11]; [12]-[14]). At the same time, the appellant contended that his mere membership of the BNP was sufficient for the AL to have an adverse interest in him (CB 96 [15]-[17]). In

submissions supporting his review application, the appellant's representatives summarised his claim to fear harm as arising from his active membership of the JCD and his actual political opinion (CB 72).

15. The appellant attended a hearing before the Tribunal on 26 March 2016 (CB 103), in which he confirmed that the only harm that he feared was because of his involvement in the BNP (CB 108 L 25). In testing the appellant's claimed membership of the JCD at an executive level, the issues the Tribunal raised included:

(a) his delay in joining the JCD until 2007, by which time he was 22 years old (CB 116-117, 120);

(b) why he would not join the party without being offered and taking a position on an executive committee, raising with the appellant in this context that "many people join a political party, such as BNP or Chatra Dal, without taking an executive committee position, such as general secretary of a ward" (CB 121);

(c) in response to his evidence that he invited people to join the party, what his methods were and whether he would in fact be approaching persons who were significantly older than he was to join the BNP (CB 122-124, 146-148), and in response to his evidence that he organised meetings and invited persons to attend, how he went about inviting persons and how many meetings were held annually (CB 125-126);

(d) his involvement in elections and what he said to persons to encourage them to vote for the BNP (CB 127-129);

(e) differences between his transfer interview and his evidence before the Secretary in terms of the incidents where he suffered serious harm, including discrepancies between his claims regarding the 2013 incident and the date of the hospital records provided (CB 134-135, 136-144); and

(f) the claims that were advanced in his representatives' correspondence shortly before the interview (CB 144-146).[1]

16. The Tribunal put to the appellant the difficulty it was having in accepting that he was a member of the JCD and that he held a position in the manner he claimed (CB 149 L 32). It raised concerns that the things the appellant claimed to have done in the

[1] In a further submission (CB 92), the appellant's representatives provided information regarding new claims of which the appellant claimed to have had no prior knowledge, involving visits made by AL members to his home and his shop after he left Bangladesh, and AL members setting fire to his family's farm.

position he held did not suggest a high level of involvement (CB 149); and it noted that notwithstanding all of the harm he claimed to have suffered, he continued living in his village for five or six years (CB 150). The appellant's representative responded to these concerns on his behalf (CB 150-152).

17. In affirming the decision of the Secretary, the Tribunal rejected the appellant's claimed political involvement, as it was unable to be satisfied that his claims were credible. In support of that conclusion, the Tribunal relied on the following:

(a) the appellant gave significantly varying accounts of his political activities and memberships (at [20]-[23]);

(b) the appellant's claim that he was unable to join the JCD before he reached the voting age of eighteen, and then could not do so for another four years until he was able to satisfy the leaders that he was ready for appointment to a position on a ward executive committee, was 'implausible', noting in this context that it was not persuaded (as put to the appellant at the hearing) that "mass political organizations such as the BNP or the Chatra Dal, with huge memberships, place any such conditions on membership but, rather, that they actively recruited new members" (at [24]);

(c) it was not satisfied that the appellant had provided any plausible explanation for his motives in joining the JCD, an organisation aimed at mobilising support for the BNP among students at mainly secondary and tertiary levels, given that at the time he joined he had left school ten years previously, after seven years of formal education, and his account of his activities after 2007 did not have anything to do with students (at [25]-[26]);

(d) it was not satisfied that the appellant's evidence about his activities as [redacted] in [redacted] supported his claims to have held that position (at [27]-[28]); and

(e) the appellant's evidence that despite his youth and essentially limited education, he was able to approach strangers considerably older than himself and urge his political views on them, was 'generally implausible' (at [29]).

18. The Tribunal was not satisfied that the appellant was a member or supporter of the BNP or the JCD, or that he was appointed to the position of [redacted] of the JCD in [redacted] of [redacted] (at [30]). Nor was it satisfied that the appellant was imputed with a political opinion in favour of the BNP/JCD or opposed to the AL or the government. It accepted that he may have been present at public activities

organised by the BNP or the JCD in his area, but as a member of the general public (at [30]). The Tribunal also rejected the appellant's claims to have suffered harm in Bangladesh because of his political activities, again because it was unable to be satisfied that these claims were credible. In particular, the Tribunal found that:

(a) it was unable to be satisfied that the appellant's claims to have been attacked and injured by AL members in 2008, and in 2013, were credible (at [36]-[39]);

(b) it was not satisfied that AL members often visited the appellant's house and shop with threats to kill him and yet never caught him in either place, over a period of five years (at [40]); and

(c) its findings in this regard cast doubt over the reliability of other claims the appellant made to have suffered harm in Bangladesh because of his political activities, including that he was frequently beaten when he attended BNP or Chatra Dal rallies or other public events (DR [42]).

19. The Tribunal noted that it had considerable doubts as to the plausibility of the appellant's claim (made in response to the Tribunal raising concerns about the authenticity of a document supporting his holding an executive position) that local police had received a call from a person with an Australian accent asking about him, and in any event did not accept that such an incident would raise his profile with the authorities or suggest to them that he was opposed to them, stating (at [44]):

> As noted, the Tribunal is not satisfied that he was ever imputed with a political opinion favourable to the BNP/Chatra Dal or adverse to the Awami League or the government. Nor is it satisfied that he was ever seen as a 'dissident', that he had a criminal record or that he was in any other way of adverse interest to the police or other authorities.

20. In so far as the appellant contends that paragraphs 4 to 15 of the Court's reasons constitute factual findings made by the Court (AWS [13]-[15]), that characterisation must be evaluated against the Court's ultimate dismissal of his appeal from the Tribunal's decision, which rejected each of his substantive claims for protection. In those circumstances, the respondent contends that those paragraphs should be read, consistently with the heading of that part of the reasons, as a 'background' summary of the appellant's claims as opposed to indicating an acceptance, on his Honour's part, of the truth of those claims.

PART V APPLICABLE PROVISIONS

21. In addition to s 37 of the Refugees Convention Act, the respondent considers that the Court should have before it the legislation repealing s 37, namely, the *Refugees Convention (Derivative Status and Other Measures) Act 2016* (Nr) and the *Refugees Convention (Amendment) Act 2017* (Nr).

PART VI ARGUMENT

Ground 1: Compliance with section 37 of the Refugees Convention Act and procedural fairness

First argument: repeal of section 37 of the Refugees Convention Act

10 22. Dealing with the first of the appellant's three arguments on this ground (AWS [21]), s 37 of the Refugees Convention Act did not apply to the Tribunal's review of the Secretary's decision. As Khan J observed (J [27]), s 37 was repealed by s 24 of the *Refugees Convention (Derivative Status and Other Measures) (Amendment) Act 2016* (Nr) (**2016 Amending Act**). There was, however, some uncertainty as to the date of effect of that repeal,[2] in response to which the *Refugees Convention (Amendment) Act 2017* (Nr) (**2017 Amending Act**) was enacted. Section 4 of the 2017 Amending Act provides:

> The repeal of section 37 of the principal act, effected by s 24 of the [2016 Amending Act], is taken to have commenced on 10 October 2012.

20 23. Although the appellant suggests that in the absence of any definition of the "principal act", the purport of the section is unclear (AWS [28]), the Long Title of the 2017 Amending Act indicates that the Act's only purpose was to amend the Refugees Convention Act. Additionally, s 4 refers to s 24 of the 2016 Amending Act, which was clearly repealing s 37 of the Refugees Convention Act (see s 3 of the 2016 Amending Act, the Long Title of which is identical to that of the 2017 Amending Act).[3]

24. The appellant applied to the Tribunal on 10 November 2014. At least by reason of s 4 of the 2017 Amending Act, s 37 of the Refugees Convention Act was repealed with

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2 As to the uncertainty, see s 2, 5, 23 and 24 of the 2016 Amending Act; cf the Explanatory Memorandum to the Refugees (Derivative Status and Other Measures) (Amendment) Bill 2016.

3 See also ss 5 to 7 of the 2017 Amending Act, which concern the retrospective repeal of s 37.

effect from 10 October 2012, such that the Tribunal's review should not be assessed by reference to it.[4] Although Khan J did not refer to the 2017 Amending Act, his Honour's conclusion that s 37 did not apply on and from 10 October 2012 was correct as a matter of law at the time of his decision. It follows that there was no legal error in his Honour proceeding to evaluate the appellant's contention that the information the subject of this ground was not put to him by reference to general principles of procedural fairness, and not by reference to s 37 of the Refugees Convention Act. As the appellant acknowledges (AWS [29]), there is in those circumstances a real question of the utility of an order to "correct" his Honour's decision, in the absence of any other error pursuant to this ground. The respondent contends that this Court would not make such an order.

25. Contrary to the appellant's submission (AWS [27]), the respondent drew the enactment of the 2017 Amendment Act to the attention of the Court, in correspondence that was copied to his representatives at the time.[5] Additionally, the respondent notes that his Honour invited both parties to make further submissions regarding the repeal of s 37 in light of the 2016 Amending Act, and was informed by both parties that neither wished to do so (J [28]).[6]

Second argument: procedural fairness

26. As to the second limb of the appellant's arguments on this ground (AWS [35]), the respondent accepts that the Tribunal was required to act according to the principles of natural justice: s 22(b) of the Refugees Convention Act. The nature and content of that obligation depended on the particular circumstances of this case.[7]

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4 *ROD 124 v Republic of Nauru* [2017] NRSC 49 at [34]; *DWN 049 v Republic of Nauru* [2017] NRSC 52, [38].

5 Letter dated 12 May 2017 from the respondent to the Registrar, Supreme Court of Nauru, copied to the appellant's representatives; annexed to these submissions.

6 Emails dated 8 March 2017 and 24 March 2017 sent on behalf of the respondent and the appellant's representatives to the Registrar of the Supreme Court; annexed to these submissions.

7 *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* [2006] HCA 63; (2006) 228 CLR 152 at [26]; *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* [2001] HCA 22; (2001) 206 CLR 57 at [30]-[32]; *Mobil Oil Australia Pty Ltd v Federal Commissioner of Taxation* [1963] HCA 41; (1963) 113 CLR 475 at 504.

27. At the root of any conclusion about whether procedural fairness has been afforded is an assessment of fairness.[8] Procedural fairness often requires that a person be given an opportunity of ascertaining the relevant issues and commenting on adverse information that is credible, relevant and significant.[9]

28. In the course of the hearing before it, the Tribunal outlined for the appellant a number of difficulties that it had with his claimed membership of the JCD. The Tribunal made it clear to the appellant, not only by its questioning throughout the hearing but also in terms, towards the conclusion of the hearing, that it had concerns with the credibility of his claim that he was in fact a member of the JCD, that he held a position in the way that he claimed, and that even if he held such a position, the activities he was involved did not appear to be at a level that would make him a target for all of the harm he claimed to have suffered (CB 149). The appellant was on notice that the evidence he had given in support of his claims was in issue, and was given ample opportunity, both throughout the hearing and in response to what was put towards its conclusion, to address the Tribunal's concerns.

29. One of the difficulties the Tribunal had with the appellant's claims, which it raised with him, was why he did not join the JCD – the student wing of the BNP – until he was 22 years old (CB 116-117, 120). In seeking to explain this to the Tribunal, the appellant's evidence was that membership was only open to him when he reached the voting age of eighteen, and even when he reached that age he had to wait another four years until he satisfied leaders that he was ready for appointment to a position on a ward executive committee. As the Tribunal put to him, the appellant seemed to be saying that joining the JCD was the same as taking an executive position (CB 121 L 1, L 11). When asked to clarify its question, the Tribunal noted that "many people join a political party, such as the BNP or Chatra Dal, without taking an executive committee position, such as general secretary of a ward", and asked why he could not have taken that approach (CB 121 L 22).

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8 *Kioa v West* [1985] HCA 81; (1985) 159 CLR 550 at 583 (Mason J); *Wiseman v Borneman* [1971] AC 297 at 308, 309 and 320; *Bushell v Secretary of State for the Environment* [1981] AC 75 at 95, 110, 121 and 119; cited by Allsop CJ and Katzmann J in *NBNB v Minister for Immigration and Border Protection* [2014] FCAFC 39, (2014) 220 FCR 44 at [4].

9 *Kioa v West* [1985] HCA 81; (1985) 159 CLR 550 at 628; *Commissioner for ACT Revenue v Alphaone Pty Ltd* [1994] FCA 1074; (1994) 49 FCR 576 at 590-592.

30. In paragraph 24 of the Tribunal's reasons, the Tribunal did not accept the appellant's explanation as to why he could not join the JCD until he was 22, describing it as implausible. It was in reaching that conclusion, which was but one aspect of the Tribunal's first reason as to why it was not satisfied of the appellant's credibility regarding his claimed political membership and position (at [19]), that the Tribunal made the same general point that it had put to the appellant for his comment in this context (cf AWS [41]). The Tribunal's reference to having information indicating that membership of the party and the holding of executive positions were separate matters does not mean that the opportunity that the appellant was given at the hearing, to comment on that matter, did not comply with the obligations of procedural fairness. The very point, one of general party structure, was disclosed to the appellant in the course of the hearing; procedural fairness did not require the Tribunal to take further steps to expose the information to him (cf AWS [44]).

31. Contrary to the appellant's submissions (AWS [40]), the Tribunal did not 'use' the information referred to at [24] of its reasons in [22] and [23]. Rather, the Tribunal relied, in those paragraphs, on the appellant's own evidence at the hearing. The Tribunal found that evidence to be confused and conflicting on the subject of whether he had joined the BNP or the JCD, which in turn cast doubt on his claims of having any real political involvement.

32. In so far as the appellant seeks to raise in this context the standard of interpretation during the hearing (AWS [45]-[46]), those contentions should not be entertained. The standard of interpretation was not a ground of review below. To the extent that the appellant complains that the Tribunal failed to disclose the information to him in a manner that he could understand, the material in question was put to the appellant in response to a request from him, through the interpreter, for clarification of the point that the Tribunal was seeking to make (CB 121). Upon the Tribunal providing the material by way of clarification of its point, the appellant did not seek further clarification but answered the Tribunal's question.

Third question: Compliance with section 37 of the Refugees Convention Act

33. For the reasons outlined above ([22]-[24]), the Tribunal was not required to comply with s 37 of the Refugees Convention Act. In any event, the appellant's contentions

in regard to s 37 rest on an assumption that the section was triggered by the information about which he complains (AWS [38]). However, consistently with s 424A of the *Migration Act 1958* (Cth), on which s 37 was apparently modelled, for the section to apply the information in question must, in terms, constitute a rejection, denial or undermining of an applicant's claims.[10] The information at issue, given its generalised nature and its relevance to the credibility of an explanation that the appellant provided as to why he did not join the JCD until he was 22 years old, did not answer that description.

Ground 2: The need for evidence

34. The appellant's submissions assume that the absence of a specific source for the statement that the Tribunal made in paragraph 24 of its reasons would, if correct, lead to the conclusion that its decision was affected by jurisdictional error. That is not so. The finding on which this part of the Tribunal's decision rested was that the appellant's claimed political involvement was not credible (at [19], [30]). That finding was based on three reasons, which the Tribunal addresses in paragraphs 20 to 29. The first reason had a number of limbs, including, in paragraph 24, two (independent) bases in support of the implausibility of the appellant's claim to have been unable to join the JCD before he was ready to take an executive position at the age of 22. Even if the appellant were correct that there was no supporting evidence for the Tribunal's reasoning on an aspect of one of its reasons for its credibility finding, there was an abundance of other material, in particular the appellant's own evidence, on the basis of which that finding was well open to it.

35. Further, and in any event, it does not follow from the absence of a specific reference to the source of the Tribunal's information in paragraph 24 of its reasons that it had no evidence for the proposition (cf AWS [47], [49]).

36. The Tribunal is established under s 11 of the Refugees Convention Act, with its membership comprising a Principal Member, two Deputy Principal Members, and such number of other members as are appointed in accordance with the Act: s 12. Save

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[10] *SZBYR v Minister for Immigration and Citizenship* [2007] HCA 26; (2007) 235 ALR 609 at [17]; *ATP15 v Minister for Immigration and Border Protection* [2016] FCAFC 53 at [42]; *Minister for Immigration and Border Protection v SZTJF* [2015] FCA 1052; (2015) 149 ALD 552; *MZXBQ v Minister for Immigration and Citizenship* [2008] FCA 319; (2008) 166 FCR 483 at [27]-[30].

for a specific requirement regarding eligibility for appointment as the Principal or Deputy Principal Member (s 13(2)), s 13(3)) provides that the Regulations may prescribe other eligibility appointments.

37. Regulation 4 of the *Refugees Convention Regulations 2013* (Nr) provides:

> For section 13(3) of the Act a person is eligible for appointment as a member of the Refugee Status Review Tribunal only if the person:
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> (a) has at least 2 years' experience in refugee merits review at a tribunal or equivalent level; and
>
> (b) has proven capacity to conduct administrative review; and
>
> (c) has thorough knowledge of UNHCR refugee status guidelines and standards; and
>
> (d) has demonstrated skills in research, clear oral and written communication and use of word-processing software.

38. In *Muin v Refugee Review Tribunal* (2002) 190 ALR 601, Gleeson CJ observed that, "[a]s is often the case with administrative decision-makers", members of a Tribunal such as the Tribunal in the present case "are likely to accumulate knowledge from the repetitive nature of the matters with which they deal" (at [7]). Justice Hayne similarly observed (at [263]) that members of such a Tribunal are "obviously expected to develop and rely on knowledge of affairs in the countries from which claimants come". As Tribunal members read more widely about a particular country, they develop a body of knowledge upon which their views about a country are formed:[11]

> And as they become more knowledgeable their capacity comprehensively to identify the particular sources of their knowledge would ordinarily diminish.

39. As noted above, the information in question was about party structure; indicating, as one might assume of a mass political party, that membership of the BNP and holding a position on an executive body were separate matters (such that the latter was not a prerequisite for the former). In light of the general nature of the information to which the Tribunal referred, the absence of a citation does not lead inexorably to the conclusion that the Tribunal had no basis for the statement it made. That is particularly

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[11] See also at [116] (McHugh J), [291] (Callinan J).

the case where, as the appellant notes (AWS FN23), the hearing transcript indicates that the Tribunal was hearing similar cases at the same time.

40. Two of the three cases on which the appellant relies to support this ground (AWS [48]) were addressing the question of no evidence specifically in the context of ss 476(1)(g) and 476(4)(b) of the Migration Act (since repealed). As there is no equivalent in the Refugees Convention Act caution should attend the application of the reasoning in those cases to the present case.[12] The reasons of Gummow and Hayne JJ in *Minister for Immigration and Multicultural and Indigenous Affairs v SGLB* at [41],[13] on which the appellant also relies, does no more than make the point that there was material to support a particular factual finding at issue in that case. That positive statement does not, by implication, support the negative proposition for which the appellant contends, in relation to the information at issue in the present case.

Ground 3: Consideration of the appellant's claims

41. It is apparent from the evidence on which the appellant relies to support the making of the claim articulated at AWS [52] that he did not separately advance that claim. The representative's submission, dated 22 March 2016 (see AWS [53]), articulated the appellant's claim solely on the basis of his actual political opinion (see [7] of that submission, CB 72). The accompanying pages which recited country information – devoid of commentary relevant to the appellant's circumstances – cannot be said to have added claims beyond what the representative advanced on her client's behalf (cf AWS [56]).

42. The claim that the representative in fact advanced was consistent with the appellant's own statements in support of his application, in which he claimed to fear harm by reference to his actual political opinion. Contrary to the appellant's submission at AWS [55], the appellant's claim to fear harm, and his evidence in support thereof, derived from his claim to have possessed a particular profile in the local area by reason of his position within the JCD. As he confirmed for the Tribunal at the hearing, that was the only basis on which he feared harm in Bangladesh (CB 108).

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12 *Minister for Immigration and Multicultural Affairs v Rajamanikkam* [2002] HCA 32; (2002) 210 CLR 222; *VAAW of 2001 v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 202.

13 [2004] HCA 32; (2004) 78 ALJR 992.

43. As noted in Part IV above, the Tribunal carefully considered the appellant's evidence in support of his claims. Ultimately, it was not satisfied that the appellant was a member of the JCD holding the position of [redacted] in his local ward, or that he was subject to any of the harm that he claimed to have suffered on that account. Its acceptance, in that context, that the appellant may have been present at public events staged in his area by the BNP or JCD, as a member of the public (at [45]), did not require the Tribunal to consider whether he had a well-founded fear of persecution on that account. Contrary to the appellant's submissions, he did not advance any other Convention reasons and nothing on the face of the information before the Tribunal raised any other Convention claim (see the Tribunal's reasons at [46]).

44. In paragraph 46 of its reasons, the Tribunal concluded that it was not satisfied that there was any reason to believe the applicant faced harm amounting to persecution on return to Bangladesh because of his political opinion. In light of that finding, the Tribunal did not fail to consider future harm in the context of the claims as the appellant put them. The Supreme Court was correct to conclude that this ground was without merit (J [57]).

Ground 4: Adequacy of reasons

45. The respondent does not dispute the necessity of the Supreme Court to give reasons. However, the adequacy of the reasons in any particular case can depend upon the nature of the proceeding and the issues raised. In an appropriate case, the reasons may be adequate by a combination of what is expressly stated, in conjunction with the inferences that necessarily arise from what is expressly stated.[14]

46. The Supreme Court concluded that the appellant's allegation, that the Tribunal had failed to consider the integer of his claim advanced in ground 3, lacked merit. That conclusion followed the Court setting out and implicitly considering the submissions of the appellant and the respondent. Evaluating the competing submissions, and reaching a decision, did not involve resolving complex matters of disputed of fact. The issue was a narrow one. Given the limited nature of the ground that the Court was

[14] *Transport Accident Commission v Kamel* [2011] VSCA 110 at [86].

evaluating the respondent contends that its statement that the ground lacked merit constituted, by necessary inference, an acceptance of the respondent's submissions.

47. In any event, the appellant does not contend that the alleged inadequacy of reasons has deprived him of any opportunity in appealing from the judgment. Nor could it be said that the alleged inadequacy has rendered this Court unable to hear and determine the appeal on ground 3, in contrast to situations where a first instance judge fails to make, or express reasons for, particular findings of fact.

48. Moreover, ground 4 is formulated by reference to ground 3 as it was put below (AWS [60]). In the appeal to this Court, the appellant has made submissions on ground 3 which add to those which were put to the Supreme Court. If this Court hears and determines ground 3, there would be a real question as to the utility of remitting the matter pursuant to ground 4 for the purpose of the Supreme Court producing reasons, when ground 3 has since been supplemented and dealt with on appeal.

PART VII ESTIMATE OF TIME

49. The respondent estimates that it will require 1.5 hours for the presentation of oral argument.

Dated: 9 August 2017

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