Federal Court of Australia

BTQ17 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCA 382

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| Appeal from: | *BTQ17 & Ors v Minister for Immigration & Anor* [2019] FCCA 2414 |
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| File number(s): | VID 1013 of 2019 |
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| Judgment of: | **KENNY J** |
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| Date of judgment: | 11 April 2022 |
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| Catchwords: | **MIGRATION** – appeal from the Federal Circuit Court – whether the Administrative Appeals Tribunal failed to consider a clearly articulated claim – appeal dismissed |
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| Legislation: | *Federal Court Rules 2011* (Cth), rr 1.34, 9.63, 9.64  *Migration Act 1958*(Cth), ss 36(2)(aa), 91R |
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| Cases cited: | *Dranichnikov v Minister for Immigration and Multicultural Affairs* [2003] HCA 26; 197 ALR 389  *Htun v Minister for Immigration and Multicultural Affairs* [2001] FCA 1802; 233 FCR 136  *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v EGZ17* [2022] FCAFC 12  *MZAPC v Minister for Immigration and Border Protection* (2021) 95 ALJR 441; [2021] HCA 17  *NABE**v Minister for Immigration and Multicultural and Indigenous Affairs (No 2)* [2004] FCAFC 263; 144 FCR 1 |
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| Division: |  |
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| Registry: | Victoria |
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| National Practice Area: |  |
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| Number of paragraphs: | 34 |
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| Date of hearing: | 22 March 2022, 11 April 2022 |
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| Counsel for the First Appellant: | The First Appellant appeared in person with the assistance of an interpreter |
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| Counsel for the Second, Third and Fourth Appellants: | The Second, Third and Fourth Appellants did not appear |
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| Solicitor for the First Respondent: | Ms I Ward of Sparke Helmore Lawyers |
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| Counsel for the Second Respondent: | The Second Respondent filed a submitting notice save as to costs |
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ORDERS

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|  | | VID 1013 of 2019 |
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| BETWEEN: | BTQ17  First Appellant  BTR17  Second Appellant  BTS17 (and another named in the Schedule)  Third Appellant | |
| AND: | MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS  First Respondent  ADMINISTRATIVE APPEALS TRIBUNAL  Second Respondent | |

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| order made by: | KENNY J |
| DATE OF ORDER: | 11 April 2022 |

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The first and second appellants pay the costs of the first respondent, as agreed or assessed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

KENNY J:

1. This is an appeal from a judgment of the Federal Circuit Court of Australia delivered on 30 August 2019, dismissing an application for judicial review of a decision of the Administrative Appeals Tribunal (the Tribunal). The Tribunal had affirmed a decision of a delegate of the Minister to refuse to grant protection visas to the appellants. For reasons that follow, I would dismiss the appeal.
2. The first appellant appeared at the hearing on 22 March 2022, and she consented to be the litigation representative for her children, the third and fourth appellants. On that day, the Court made orders that:
3. The first appellant is appointed as the litigation representative of the third and fourth appellants pursuant to r 9.63 of the *Federal Court Rules 2011* (Cth).
4. The requirements of rr 9.63 and 9.64 are dispensed with pursuant to r 1.34 of the *Federal Court Rules 2011* (Cth).

The Court also ordered that:

1. The name of the first respondent be amended to “Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs”.
2. Also on 22 March 2022, the Court adjourned the further hearing of the appeal until 11 April 2022 at 4:30 pm and granted the respondent Minister leave to file short submissions on the effect of the first appellant’s statement that she and her husband had separated, both as regards this appeal and as regards any steps that she might properly take under the *Migration Act 1958* (Cth) (the Act). On 31 March 2022, the Minister filed written submissions in conformity with this leave. The Court subsequently made an order giving the first and second appellants an opportunity to provide a written response to the Minister’s submissions. No such response has, however, been filed.
3. The Court gave the first appellant (who was also her children’s litigation representative) and the second appellant notice of the adjourned hearing by email and by letter, addressed to their respective addresses for service and to their last known postal addresses. The Court had also informed the first appellant of this date at the previous hearing. The first appellant appeared via Teams video link today. The second appellant did not appear at the adjourned hearing, notwithstanding the notices sent to him.
4. The first and second appellants were married to one another at the time of the Tribunal’s decision, although the first appellant informed the Court at the hearing on 22 March 2022 that she and the second appellant had separated from one another some four and a half years ago. Both adult appellants are citizens of Sri Lanka. The third and fourth appellants are their sons, one of whom was born in Sri Lanka and the other, in Australia. The first, second and third appellants arrived in Australia on 3 September 2013, with visitor visas. The first appellant lodged a protection visa application, with a written statement of her claims for protection, with the Minister’s Department the same month. Her application included the other appellants as part of her family unit. She added the fourth appellant, who was born in Australia in July 2014, shortly after his birth. A migration agent subsequently made a number of written submissions to the Department on the family’s behalf. These submissions included various news articles, two reports from a psychologist, and medical records. The first appellant also attended an interview with a delegate of the Minister (the delegate) on 10 February 2015, assisted by an interpreter.
5. By letter dated 2 April 2015, the delegate informed the first appellant that he had refused her visa application (and in consequence the dependent applications of the other family members). In his decision record, the delegate recorded the first appellant’s claims. The delegate wrote:

The applicant’s claims are as follows:

* She married her husband in December 2003; however her husband departed Sri Lanka for Italy in January 2004 and returned to see her on only three occasions over the next decade. She was, for all intents and purposes, a “single woman in Sri Lanka”. Her representative asserts that single women in Sri Lanka constitute a particular social group.
* During her husband’s 2005 visit, the applicant became pregnant. She gave birth to their son in 2006. Between 2006 and September 2013, the applicant was a single mother in Sri Lanka.
* In April 2011, the applicant and her son accompanied her husband to the airport in a rental car driven by a man known to the applicant as [AB]. She claims that on the return journey, [AB] continually stared at her through the rear-view mirror and made inappropriate remarks.
* She claims that a few days later, [AB] approached her as she was dropping off her son at school. She claims that she was certain [AB] had followed her there.
* The applicant claims that a few weeks later, [AB] turned up at her house. She claims he was rude towards her parents, and then left. However, he returned regularly to harass her. Finally, her elderly father told [AB] to leave and not to return; however he responded by physically assaulting her father. Soon after, he returned again, inebriated and in the company of several men. She claims that she was made to cook for the men.
* In April 2013, after two years of periodic harassment, [AB] turned up at her house while her parents were visiting an aunty and raped her. She says that she tried to report the rape to the police; however they told her that she didn’t have evidence.
* She claims that [AB] is from a powerful local family with connections to the criminal underworld, including a corrupt politician [] and his notorious son []. She believes that [AB] is immune from arrest and prosecution due to these connections. She believes the local police are corrupt.
* She claims that if she returns to Sri Lanka, she has a real chance of being harmed by [AB] and his criminal associates as she will once again become a “single woman” in Sri Lanka. She claims her husband cannot return to Sri Lanka as he has not worked there since 1995. Her representative asserts that her status as a single mother/single woman will place her at risk of harm from other men.
* She claims she cannot relocate within Sri Lanka as they have invested all their savings into building a house in their home village.

1. The delegate accepted that the first appellant was “in practice, a single mother and the head of a female-headed household for most of the period January 2004 to August 2013”. The delegate was satisfied that “‘single mothers in Sri Lanka’ constitutes a [particular social group]” and that the first appellant was a member of this social group for the purposes of the Refugee Convention and s 91R of the Act. The delegate accepted that AB had sexually assaulted the first appellant in April 2013 because of her membership of this social group; and that she feared that she would continue to be harmed on this account if she returned to Sri Lanka. The delegate accepted that this constituted a claimed fear of persecution within the meaning of the Convention and the Act. Nonetheless, the delegate refused the first appellant a protection visa. This was because the delegate was not satisfied that there was a real chance that the first appellant would be persecuted as a single mother or single woman if she returned to Sri Lanka, since the delegate was not satisfied that the appellant would return to Sri Lanka without her husband. The delegate also found that the first and second appellants would be able to relocate in Sri Lanka “without damaging their economic capacity to subsist”.
2. The first appellant, her husband and two children applied to the Tribunal for review of the delegate’s decision, and the first appellant, again with the assistance of a registered migration agent (Mrs Michelle Gunaratne) and an interpreter, attended a hearing before the Tribunal on 19 October 2016. The Tribunal affirmed the delegate’s decision.
3. In its reasons, the Tribunal set out the appellants’ claims. It specifically noted (at [7], and [13]-[15]) that:

[7] The applicants’ representative also produced two letters from a psychologist dated 12 December 2013 and 4 February 2015 in which he referred to the applicant wife’s claims and said that in his opinion she was suffering from extremely severe anxiety and depression. The psychologist said that the applicant wife could not tell her husband what had happened because to do so would bring shame on her and her family and would risk the life of her husband who she believed would confront [AB]. He said that for the same reasons she could not move to live elsewhere in Sri Lanka because her husband would need to know why she wanted to do so.

…

[13] In a further submission dated 24 February 2015 the applicants’ representative produced documents with regard to the family’s medical issues. …

[14] Under cover of a submission to the Tribunal dated 12 October 2016 the applicants’ representative produced a copy of a statutory declaration made that day by the applicant wife in which she said that she could not relocate within Sri Lanka because her husband was not aware that she had been raped and she would not be able to explain to him why she needed to leave the village where her family had lived for generations. She referred to her evidence that if she told her husband he would wish to take revenge on those responsible and that this would put her husband’s life in great danger … She also referred to her husband’s health problems ... She said that she wanted her children to have a normal life. She added that Sri Lanka was a very small country, that the perpetrator came from a family of thugs and politically influential businessmen and that she would not be able to cope with the fear and pressure if she had to return to Sri Lanka.

[15] The applicants’ representative also produced a letter dated 21 September 2016 from a clinical psychologist who said that she had seen the applicant wife for ten sessions since 21 October 2015. The psychologist referred to the applicant wife’s claims and said that she reported symptoms indicative of post-traumatic stress disorder, moderately severe clinical depression and generalised anxiety…

1. With respect to the first appellant’s claims, the Tribunal stated (at [17]):

I asked the applicant wife what her husband would do if she went back to Sri Lanka. The applicant wife said that her husband was here with her in Australia and that if she went back to Sri Lanka her husband would come to know what had happened and their family would be disrupted. I asked her whether, if they went back to Sri Lanka, her husband would stay in Sri Lanka whether he would go somewhere else. **The applicant wife said that he would stay there with the family** …

(Emphasis added)

1. The Tribunal stated (at [18]-[19]) that, when asked why she had been targeted by AB the first appellant said:

… she thought that this man had targeted her because he had known that her husband was not at home. ...

I put to [her] that if she went back to Sri Lanka and her husband went with her he would not be away any more [sic]. The applicant wife said that if her husband came to know this problem it would aggravate his sicknesses and her family would be really affected. She confirmed that she had kept what had happened secret. I put to her that she had said that [AB] had targeted her because he had known that her husband had not been at home and that if she and her family went back to Sri Lanka now her husband would stay at home so [AB] would not have a reason to target her any more [sic]. The applicant wife said that if they went back to Sri Lanka her husband would come to know what had happened and this would aggravate the situation and more and more problems would come up.

1. The Tribunal explored the first appellant’s claims about her health problems and those of her husband. It drew her attention to the fact that her claims did not indicate any Convention nexus with these claims or satisfy the complementary protection criteria.
2. Putting aside some presently immaterial matters, the Tribunal found that there was no real chance that the first appellant would be persecuted for reasons of her membership of the particular social group of ‘single women’ in Sri Lanka if she and her family were to return there. It said:

[32] … As I put to her, from her account it appears that [AB] only targeted her because of the chance encounter when he drove her and her husband to the airport in April 2011. She does not claim that she or other members of her family have had dealings with [AB] or other members of [AB]’s family in the past. As I put to the applicant wife, I consider on the basis of her account that [AB] was taking advantage of the opportunity which he believed existed because he knew that her husband was not in the country … I do not accept that [AB] would have any reason to target her if she were to return to Sri Lanka now or in the reasonably foreseeable future with her husband and their two children. While I accept that, as she said, her husband will not be able to stay at home all the time looking after her and she herself will have to go out, the fact remains that the opportunity which presented itself to [AB] because he knew that her husband was not in the country will no longer exist.

[33] … At the hearing before me, although she initially said that her husband would stay in Sri Lanka with her and their family, she said subsequently that if he were unable to find a job locally he might have to go to the Middle East to work and that if he were not available these people could come. However, she has said that her husband has heart problems, high blood pressure, diabetes and pancreatitis. Given his health problems I consider that there is only a remote chance that he will go to the Middle East to work if the family returns to Sri Lanka now or in the reasonably foreseeable future. While I accept that her husband has worked in the past in a restaurant in Italy, the applicant wife has not suggested that there is a possibility that he will return to Italy to work in the future.

[34] I have therefore assessed the applicant wife’s claims on the basis that her husband will accompany her and their two children back to Sri Lanka and that he will remain there with her rather than travelling overseas for work once again… Given that, as I have said, I consider that [AB] was taking advantage of an opportunity which he believed existed because he knew that her husband was not in the country, I do not accept that there is a real chance that the applicant wife will once again be raped or troubled or otherwise persecuted by [AB] and his friends or associates if she returns to Sri Lanka with her husband and their two children now or in the reasonably foreseeable future.

1. The Tribunal reiterated (at [36]) that the first appellant had not made any Convention-related or complimentary protection claim regarding the medical treatment available to her and the second appellant in Sri Lanka. The Tribunal also noted (at [37]) that the first appellant had claimed that:

… she would not be able to cope with the fear and pressure if she had to return to Sri Lanka. … I consider that this fear and pressure relates to her individual circumstances based on her past experiences in Sri Lanka. For the reasons given … I do not accept on the evidence before me that the applicants have a well-founded fear of being persecuted for one or more of the five Convention reasons if they return to Sri Lanka now or in the reasonably foreseeable future.

1. Having regard to all these and related considerations, the Tribunal determined to affirm the delegate’s decision. The appellants subsequently applied to the Federal Circuit Court for judicial review of the Tribunal’s decision.
2. In their amended application to that Court, the appellants claimed jurisdictional error on four bases, namely:
3. the Tribunal failed to consider “a clearly articulated claim … that there was a real chance that the [first appellant] would continue to be harassed even if her husband remained in Sri Lanka, based on the nature and severity of the harassment and the fact that it was sustained over a significant period of time”;
4. the Tribunal “misconstrued a clearly articulated claim … that there was a real chance that the [first appellant] would continue to be harassed even if her husband remained in Sri Lanka, based on the nature and severity of the harassment and the fact that it was sustained over a significant period of time”;
5. the Tribunal misapplied the law or failed to ask itself the right question in finding that the first appellant’s claim that she would suffer mental harm if removed to Sri Lanka could not satisfy the complementary protection requirements based on the principle in *SZRSN v Minister for Immigration & Citizenship* [2013] FCA 751 (*SZRSN*); and
6. the Tribunal fell into jurisdictional error by failing to comply with s 424A of the Act or by acting in breach of the rules of procedural fairness, in that it did not invite the first appellant to comment on or respond to the issue of whether her husband’s ill health precluded him from returning to work overseas.

None of these grounds was successful, and the primary judge dismissed the application for review.

1. The primary judge accepted that a fair reading of the Tribunal’s reasons, particularly at [19], [21], [22], [24] and [25], showed that the Tribunal addressed but did not accept the claim that there was a real chance AB would continue to harass the first appellant even if the second appellant remained in Sri Lanka. In the primary judge’s opinion, this finding of fact was “reasonably open” on the evidence before the Tribunal. The primary judge therefore rejected the first two grounds of the appeal: see *BTQ17 & Ors v Minister for Immigration & Anor* [2019] FCCA 2414 (“PJ”) at [29].
2. Respecting ground 3, the primary judge rejected the appellants’ submission that the Tribunal’s reference to *SZRSN* at [41] of its reasons indicated that the Tribunal had misdirected itself. In *SZRSN* Mansfield J held that harm that may arise from the act of removal from Australia would not meet the definition of ‘significant harm’ in s 36(2A) of the Act. The appellants challenged the Tribunal’s reference at [41] to *SZRSN*.
3. The primary judge accepted that the first appellant’s claim was that “she would not be able to cope with the fear and pressure of being returned to the home in which she had been raped and subjected to ongoing harassment by her rapist”: PJ, [35]. Her Honour emphasized, however, that [38] to [41] of the Tribunal’s reasons must be read as a whole: PJ, [42]. In this context, her Honour drew attention to the fact that the heading to these paragraphs was: “*Are there substantial grounds for believing that, as a necessary and foreseeable consequence of the applicants being removed from Australia to Sri Lanka, there is a real risk that they will suffer significant harm?*”.Her Honour concluded that, based on the Tribunal’s findings of fact, the Tribunal’s reasons in these paragraphs showed that it was not satisfied that there was a real risk that if returned to Sri Lanka either the first appellant or the family would suffer significant harm. Her Honour held (PJ, [43]) that the Tribunal was not satisfied that: (1) the first appellant would suffer significant harm on account of AB; or (2) the family group would suffer significant harm because the second appellant “will come to know” that AB had raped his wife. The primary judge also noted that the Tribunal found that the first and second appellants would not suffer “significant harm” (within the meaning of the Act) because of their medical issues if they returned to Sri Lanka: PJ, [44]. The primary judge held that the reference to *SZSRN* was “entirely appropriate” (PJ, [45]) in this context, given that the Tribunal concluded at [41] of its reasons that, in light of its findings, the appellant’s submission – that the fear and pressure she may feel if removed to Sri Lanka brought her within the complementary protection criteria – failed.
4. The primary judge also rejected the fourth of the appellants’ grounds. Referencing the transcript of the hearing and the Tribunal’s reasons, the primary judge held that the Tribunal made it clear to the first appellant that issues in the review included whether the second appellant would return to Sri Lanka with her and whether he would be able to obtain work: PJ, [54]. The primary judge concluded that “[b]oth the issues were comprehensively canvassed in the interview with the first applicant as evident both by the decision record itself and also by the transcript of the tribunal hearing filed in these proceedings by the applicants’ representatives”: PJ, [61].

# THE APPEAL TO THIS COURT

1. The appellants appealed to this Court against the judgment of the Federal Circuit Court. The Notice of Appeal stated one ground, namely:

The Court erred in failing to find that the Tribunal erred in law and thereby fell into jurisdictional error, when it failed to consider a clearly articulated claim raised in the application before it, namely that there was a real chance that the First App[ellant] would continue to be harassed even if her husband remained in Sri Lanka, based on the nature and severity of the harassment and the fact that it was sustained over a significant period of time.

This was also the first ground of the appeal in the Federal Circuit Court.

1. The appellants did not file any written submissions. At the hearing, the first appellant, who did not appear in court in person but electronically (via Teams), submitted that the Tribunal focused on the protection that her husband would give her but did not consider her stress. She submitted that the Tribunal did not consider her circumstances adequately and, in particular, did not consider the psychologist’s report about her. The first appellant also said that she had been separated from her husband for four and a half years, and was a single parent with two children.
2. In written submissions filed in conformity with the Court’s orders, the Minister submitted that there was no error in the primary judge’s determination about whether the Tribunal considered the issue of harassment in Sri Lanka if both the first and second appellants lived there together. The Minister submitted that the Tribunal specifically addressed this issue in its reasons, and expressly raised the issue with the first appellant at the Tribunal hearing. The Minister relied on a number of paragraphs in the Tribunal’s reasons to support this proposition, including [19], [20], [21], [22], [24], and [25]. The Minister further submitted that these paragraphs showed that the Tribunal had an extensive discussion with the first appellant about her claim that she would continue to be harassed even if her husband remained in Sri Lanka.
3. Ms Ward, for the Minister, appeared in person at the hearing, and in addition to addressing the primary issue raised by the notice of appeal, also responded to the first appellant’s submissions about the Tribunal’s failure to consider her circumstances adequately and, in particular, her mental health. Ms Ward referred to [15], [29], [36] and [39] of the Tribunal’s reasons in support of her submission that the Tribunal specifically considered psychological reports concerning the first appellant and the first appellant’s mental state.
4. As already indicated, after the hearing on 22 March 2022, the Minister filed short written submissions with leave in response to the first appellant’s statement that she and her husband (the second appellant) had separated.

# discussion

1. Where there is a valid review application in respect of a Part 7-reviewable decision, as in this case, the Tribunal’s task under s 414 of the Act is to review that decision. Broadly speaking, the duty to review requires the Tribunal to consider all of the applicants’ clearly articulated claims, as well as those claims clearly arising from the established facts and evidence. See, for example, *Htun v Minister for Immigration and Multicultural Affairs* [2001] FCA 1802; 233 FCR 136 at [14] (Merkel J), [42] (Allsop J, Spender J agreeing); *Dranichnikov v Minister for Immigration and Multicultural Affairs* [2003] HCA 26; 197 ALR 389 at [24]; and *NABE**v Minister for Immigration and Multicultural and Indigenous Affairs (No 2)* [2004] FCAFC 263; 144 FCR 1 at [63], [68].
2. There is ample support in the Tribunal’s reasons for the conclusion that the Tribunal raised with the first appellant at the hearing issues relating to her prospective situation on return to Sri Lanka, particularly as regards AB. The Tribunal specifically referred to raising these issues with the first appellant at [19]-[25] and [32] of its reasons. In these paragraphs, the Tribunal indicated that it asked about whether the second appellant (her husband) would remain with her in Sri Lanka; and how he would come to know about AB if the family returned there. It also recorded that it questioned her about the possibility of her continued harassment if she were no longer to be seen as single mother in Sri Lanka because her husband was living with her there.
3. The same paragraphs of the Tribunal’s reasons also show that the Tribunal specifically considered the appellant’s claim that she would continue to be harassed in Sri Lanka even if her husband returned with her. The Tribunal specifically noted, at [24]-[25], the first appellant’s statement that her husband would return to Sri Lanka with her and that she had said that AB had previously harassed her because her husband had not been there. After summarising its understanding of her claims at [32], the Tribunal stated “the fact remains that the opportunity which presented itself to [AB] because he knew that her husband was not in the country will no longer exist”: see [13] above. As to her claims that he might seek work outside Sri Lanka, the Tribunal held, at [33], that in light of her husband’s health problems, the chance that he would work in the Middle East or Italy as he had done before was remote. This led the Tribunal to assess the first appellant’s claims on the basis that her husband would remain with her in Sri Lanka: see reasons at [34], set out at [13] above. It therefore found that there was no real chance that the first appellant would be persecuted for her membership of the particular social group of ‘single women’ in Sri Lanka if she returned to Sri Lanka in the foreseeable future: see Tribunal reasons at [37]. It also found that there was only a remote chance that her husband would find out about what had happened at an earlier time in Sri Lanka if she returned there with him and her children: see Tribunal reasons at [35].
4. In the face of the Tribunal’s discussion with the first appellant and its detailed reasons, the primary judge was clearly correct to reject what was the first ground of the appeal before him. The claim that the Tribunal failed to consider that there was a real chance that she would continue to be harassed even if her husband remained in Sri Lanka was not tenable. The only ground of this appeal must fail.
5. As noted above, the appellant made a further claim at the hearing to the effect that the Tribunal did not consider a psychological report or reports. As Ms Ward submitted, reference to the Tribunal’s reasons at [15], [29], [36] and [39] demonstrates that the Tribunal considered the psychologists’ reports about the appellant’s mental state and indeed accepted, at [39], that she was suffering from post-traumatic stress disorder, moderately severe clinical depression and generalised anxiety. The Tribunal also considered the significance of her mental state at a number of relevant points in its reasons: see, for example, Tribunal reasons at [29], [36], [39]-[40].

# DISPOSITION

1. As already stated, at the hearing on 22 March 2022, the Court adjourned the hearing of this appeal to 11 April 2022, to allow consideration of the adult appellants’ claimed change in circumstances. I accept that, as the Minister submitted in his most recent submissions, this claimed change of circumstances cannot affect the outcome of the appeal: see *MZAPC v Minister for Immigration and Border Protection* (2021) 95 ALJR 441; [2021] HCA 17 at [29]-[30]; and *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v EGZ17* [2022] FCAFC 12 at [27]-[28].
2. The adjournment also permitted consideration of the appropriate practical steps that the first appellant might take in the future in view of what appeared to be her change in circumstances. In his most recent submissions, the Minister noted that:

(a) It is open for the appellant to apply for Ministerial intervention under s 417 of the *Migration Act 1958* (Cth) seeking that the Minister substitute for the Tribunal’s decision a decision favourable to the appellant.

(b) Similarly, it is open for the appellant to make a request that the Minister lift the bar under s 48A of the *Migration Act 1958* (Cth) to allow her to make another application for a protection visa.

1. There was little disagreement about the disposition of the costs on this appeal.
2. For the reasons stated above, this appeal should be dismissed, with costs to be paid by the first and second appellants, as agreed or assessed.

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| I certify that the preceding thirty-four (34) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Kenny. |

Associate:

Dated: 11 April 2022

**SCHEDULE OF PARTIES**

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|  | VID 1013 of 2019 |
| Appellants |  |
| Fourth Appellant: | BTT17 |