Federal Court of Australia

GBY18 v Minister for Immigration, Citizenship and Multicultural Affairs [2022] FCA 1517

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| Appeal from: | G*BY18 v Minister for Home Affairs & Anor* [2020] FCCA 675 |
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| File number: |  |
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| Judgment of: | **MARKOVIC J** |
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| Date of judgment: | 15 December 2022 |
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| Catchwords: | **MIGRATION –** application for an extension of time to appeal from orders made by the **Federal Circuit Court** of Australia (now the Federal Circuit and Family Court of Australia) – where the first respondent consents to the extension of time – application granted  **MIGRATION** – appeal from orders made by the Federal Circuit Court dismissing an application for judicial review of a decision of the second respondent (**Tribunal**) – whether appellant denied procedural fairness – whether decisions were made without considering the issues – whether Tribunal ignored material it was required to look at – where Tribunal misunderstood the appellant’s evidence in relation to the quantum of the interest payable on a loan – where the Tribunal’s ultimate conclusion about the appellant’s credibility did not rely in any significant way on the quantum of the interest payable – appeal dismissed |
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| Legislation: | *Migration Act 1958* (Cth) |
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| Cases cited: | *DAO16 v Minister for Immigration and Border Protection* (2018) 258 FCR 175;[2018] FCAFC 2  *Gill v Minister for Immigration and Border Protection* (2017) 250 FCR 309  *Hasan v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 1194  *SFGB v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 77 ALD 402; [2003] FCAFC 231; 77 ALD 402  *SZSEI v Minister for Immigration and Border Protection* [2014] FCA 465  *Tu’uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 96 ALJR 819; [2022] HCA 28  *WALN v Minister for Immigration, Multicultural and Indigenous Affairs* [2006] FCAFC 131 |
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| Division: |  |
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| Registry: | Australian Capital Territory |
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| National Practice Area: |  |
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| Number of paragraphs: | 73 |
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| Date of hearing: | 10 November 2022 |
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| Counsel for the Applicant: | The Applicant appeared in person |
|  |  |
| Counsel for the First Respondent: | Ms K Hooper |
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| Solicitor for the First Respondent: | Clayton Utz |
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| Counsel for the Second Respondent: | The Second Respondent did not appear |

ORDERS

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|  | | ACD 15 of 2020 |
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| BETWEEN: | GBY18  Applicant | |
| AND: | MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS  First Respondent  ADMINISTRATIVE APPEALS TRIBUNAL  Second Respondent | |

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| order made by: | MARKOVIC J |
| DATE OF ORDER: | 15 december 2022 |

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The appellant pay the first respondent’s costs of the appeal as agreed or taxed.

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

REASONS FOR JUDGMENT

MARKOVIC J:

1. On 27 March 2020 the applicant filed an application for an extension of time to appeal from orders made by the **Federal Circuit Court** of Australia (now the Federal Circuit and Family Court of Australia) on 19 February 2020 dismissing his application for judicial review of a decision of the second respondent (**Tribunal**) with costs: see **G*BY18*** *v Minister for Home Affairs & Anor* [2020] FCCA 675. The Tribunal had affirmed a decision of the first respondent (**Minister**) not to grant the applicant a protection visa. The application for an extension of time is accompanied by a draft notice of appeal.

# application for an extension of time

1. The applicant requires an extension of nine days to file his notice of appeal.
2. The principles relevant to consideration of whether time to file a notice of appeal should be extended were summarised by a Full Court of this Court (Yates, Wheelahan and O’Bryan JJ) in *BQQ15 v Minister for Home Affairs* [2019] FCAFC 218 (at [33]). The Full Court noted that such applications are not to be granted unless it is proper to do so and that legislated time limits are not to be ignored. In determining whether an extension of time should be granted there must be some acceptable explanation for the delay; the question of prejudice to the respondent in defending the proceeding caused by the delay is a material factor militating against the grant of an extension. The mere absence of prejudice to the respondent is not enough to justify the grant of an extension; and the merits of the substantial application are to be taken into account.
3. Recently in ***Tu’uta Katoa*** *v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 96 ALJR 819; [2022] HCA 28, the High Court considered the approach to be taken to the assessment of the merits of a proposed application in the context of the statutory discretion in s 477A(2) of the ***Migration Act*** *1958* (Cth). A majority of the Court (Kiefel CJ, Gageler, Keane and Gleeson JJ) held that there will be circumstances in which a more detailed assessment, rather than an impressionistic evaluation, of the proposed grounds of review is required: at [18]-[19]. To similar effect see [62]-[63] (per Gordon, Edelman and Steward JJ). *Tu’uta Katoa* has been applied in the context of an application for an extension of time to seek leave to appeal: see *Hasan v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 1194 at [26].
4. The applicant is not legally represented and in his affidavit affirmed on 30 March 2020 has explained the steps he took to attempt to file his notice of appeal, including his confusion about the court in which he should file it. In addition the Minister informed the Court that in his view an issue properly arises as to whether the Tribunal has fallen into jurisdictional error because of its understanding of a part of the applicant’s oral evidence. In the circumstances, the Minister consented to the application to extend time and to the hearing of the appeal proceeding immediately.
5. I was satisfied, having regard to the relevant circumstances, the identification of an arguable ground of error and the Minister’s consent, that an extension of time should be granted. Accordingly, at the hearing I made orders extending the time by which the applicant is to file his notice of appeal and granting leave to the applicant to file a notice of appeal in the form lodged with the Court on 27 March 2020. I then proceeded to hear the appeal.
6. In the balance of these reasons I will refer to the applicant as the appellant.

# background

1. The appellant is a citizen of Pakistan. He first arrived in Australia on 8 December 2007 as the holder of a subclass 572 Student visa.
2. On 19 March 2015 the appellant applied for a Protection visa but his application was found to be invalid.
3. On 7 April 2015 the appellant lodged a second application for a Protection Visa. A delegate of the Minister refused to grant the visa on the basis that the appellant is not a person in respect of whom Australia owed protection obligations.
4. On 9 October 2015 the appellant applied to the Tribunal for review of the delegate’s decision.
5. On 31 October 2018 the Tribunal affirmed the decision not to grant the appellant a Protection visa.

# the tribunal’s reasons

1. The appellant claimed to fear harm from a money lender from whom he said he had borrowed money and who he alleges will harm him if he returns to Pakistan. He also claimed that he would suffer significant harm if he is returned to Pakistan because of his adaptation to western ways and thoughts. The appellant sought his Protection visa under the complementary protection criteria.
2. The Tribunal set out the evidence given by the appellant in an unsigned statement provided to it and at the hearing including that:
3. the appellant returned to Pakistan in July 2014 for 40 days and then returned to Australia (he had previously come to Australia on a student visa, see [8] above);
4. his mother was then diagnosed with an illness and so he returned to Pakistan. Meanwhile his mother had been admitted to an expensive hospital and his brothers were not in a sufficiently strong position to borrow money;
5. the appellant thus spoke to a childhood friend, who I will refer to as “IA”, about borrowing some money. IA introduced him to a money lender who was prepared to lend him money given his friendship with IA and notwithstanding that he was living overseas. IA made all the arrangements for the loan;
6. the appellant borrowed 8 lakh Pakistan rupees and was given six months to repay the loan. He said he was never told the interest rate for the loan, it was an emergency, he was stressed and he never confirmed the interest rate. The appellant did not enter into a formal loan agreement and the only personal information he provided was his ID card, of which the money lender took a photo;
7. the appellant initially said he borrowed the money in December 2014 but then said that he borrowed it in January 2015;
8. the money lender asked for the money to be repaid after two weeks. He told IA that he could repay 5 lakh Pakistan rupees and he did so within two days. The money lender then asked for repayment of the full amount. The appellant repaid the balance of 3 lakh Pakistan rupees and “15 lakh Pakistan rupees in interest” (which as explained below was an inaccurate recording of the quantum of interest that the appellant said he had paid) three days later. He said that he had not used the money he borrowed for two months, he repaid the first instalment from that amount and he got the balance for the second repayment from his brothers and father;
9. 15 days after making the second repayment, the money lender asked the appellant for more money. IA told the appellant that the money lender was not happy with the interest he had paid. The appellant said he would pay more interest but could not do so immediately. The appellant said that he then received a call from the money lender who threatened to abduct and kill him. The appellant left immediately for Australia;
10. the appellant then obtained a new telephone number but the money lender obtained that number after two days and called him on it on two or three occasions. After that the appellant returned to Australia;
11. IA told the appellant that he believed that the money lender was involved with the wrong people. The appellant did not report the money lender to the police because IA told him that these people were dangerous and he should not make the situation worse by reporting them to the police. The appellant consulted a lawyer and was advised not to lodge a “First Information Report” as the money lender may harm him; and
12. the appellant left Pakistan at the end of February 2015 and has not heard from the money lender since.
13. The Tribunal found the appellant’s evidence to be contradictory and implausible and rejected his credibility and that of his claims. The Tribunal gave detailed reasons for doing so which are summarised at [43] below, in the context of addressing ground 2 of the appeal.
14. The Tribunal found that the appellant fabricated his claims for the purpose of obtaining a Protection visa. It did not accept that the appellant would suffer serious or significant harm if he returned to Pakistan because of his adaptation to Western ways or because of any mental health issues.
15. The Tribunal concluded that it did not accept that the appellant was at risk of serious harm or significant harm for any of the reasons he claimed if he returned to Pakistan then or in the reasonably foreseeable future. It found that the appellant did not satisfy the criterion in s 36(2)(a) or s 36(2)(aa) of the ***Migration Act*** *1958* (Cth).

# the federal circuit court decision

1. The appellant filed an application for judicial review of the Tribunal’s decision in the Federal Circuit Court in which he raised the following grounds (as written):

(1) Not adopting fair process in making the decision.

(2) Ignoring material the Tribunal was required to look at.

(3) Making decision for which there was no evidence.

1. In relation to the first ground, the primary judge found that there was no evidence before him to establish that the standard of interpretation was so deficient as to deny the appellant a fair hearing before the Tribunal. The primary judge noted that the appellant did not suggest that he had no understanding of English: *GBY18* at [23].
2. The primary judge was also satisfied that the proper procedure was followed in relation to the certificate issued pursuant to s 438 of the Migration Act, that the Tribunal gave the gist of the information in the certificate to the appellant and that it determined to place no weight on the information in it.
3. The primary judge noted, that in the absence of particulars ground 2 must fail. His Honour found that a fair reading of the Tribunal’s decision showed that it gave consideration to a wide range of information and that it gave careful and proper consideration to all relevant material: *GBY18* at [25]-[26].
4. The primary judge also observed that ground 3 was not particularised but that the Minister had interpreted the ground to refer to the Tribunal’s findings in relation to the appellant’s credibility. The primary judge was satisfied that the Tribunal’s findings, including those in relation to the appellant’s credit, were open to it on the evidence before it and for the reasons it gave. The primary judge rejected ground 3: *GBY18* at [27]-[29].

# the appeal

1. In his notice of appeal the appellant raises the following three grounds of appeal (as written):

(1) Not adopting fair process in making the decision.

(2) Ignoring material the tribunal was required to look at.

(3) Making decisions for without considering raised issues.

Grounds 1 and 2 are the same as the grounds 1 and 2 raised before the primary judge. Ground 3 is new. The Minister did not oppose it being raised for the first time on appeal.

1. The appellant relied on his written submissions dated 4 November 2022 and a further set of submissions dated 22 November 2018, which were prepared for the purposes of the hearing before the Federal Circuit Court. He also filed and served an affidavit affirmed on 30 March 2020 in which he set out the reason why he needed an extension of time to file his notice of appeal as well as other matters in support of his grounds of appeal.
2. I consider each ground of appeal below.

## Ground 1

1. By his first ground of appeal the appellant contends that he was denied procedural fairness. It seems, based on his written submissions, that the alleged denial of procedural fairness is in relation to both the hearing before the primary judge and the hearing before the Tribunal.

### Appellant’s submissions

1. In relation to the hearing before the primary judge, the appellant submitted that he experienced a denial of procedural fairness at the commencement of the hearing. The primary judge asked the appellant if he required an interpreter or could “proceed in English”. The appellant noted that he informed the primary judge that he would use an interpreter and in response the primary judge said that the “procedure” would take a bit longer but that he was entitled to an interpreter.
2. The appellant submitted that he was left with the impression that he was forced to participate in the hearing in English because the primary judge suggested that using an interpreter would take too much time. The appellant said that he considered not using an interpreter but then thought he would not be able to make his points clearly without the assistance of an interpreter and so proceeded with an interpreter.
3. In relation to the hearing before the Tribunal, the appellant submitted that the interpreter did not explain exactly what he said but interpreted in a more summary way which lacked the essence of the explanation. He said that the interpreter interpreted in Urdu but used more English words than Urdu words and it was difficult to understand fully the questions posed by the Tribunal. The appellant submitted that this issue “was totally not discussed in the hearing”, which I infer to be a reference to the hearing before the primary judge.

### Consideration

1. The appellant’s contention that he was denied procedural fairness at the hearing before the primary judge must be rejected. That is because, as is evident from the transcript of the hearing before the primary judge, the appellant was in fact assisted by an interpreter throughout the hearing.
2. Insofar as the hearing before the Tribunal is concerned, the appellant contends that the primary judge erred because he rejected the contention before him that a jurisdictional error arose because of an issue with the interpreter at that hearing. However, the appellant did not rely on any evidence, such as a transcript of the hearing and/or evidence from an interpreter pointing out the alleged mistranslations, before the primary judge, or before me, to permit a conclusion that the interpreter made any errors, let alone errors of sufficient significance to the Tribunal’s reasoning or of such a nature that he was deprived of a meaningful hearing as required by s 425 of the Migration Act.
3. As was observed by Griffiths J in *SZSEI v Minister for Immigration and Border Protection* [2014] FCA 465at [72], citing *WALN v Minister for Immigration, Multicultural and Indigenous Affairs* [2006] FCAFC 131at [29], “to succeed on this ground the appellant must establish that he was effectively prevented from giving his evidence” or “that errors had occurred in translation which were so material as to cause the decision-making process to miscarry”. The appellant did not rely on any evidence before the primary judge of that nature or that would have permitted the primary judge to make such a finding. There was no error in the primary judge’s conclusion to that effect.
4. Finally, insofar as the hearing before the Tribunal is concerned, the requirements for the conduct of a review by it are set out in Div 4 of Pt 7 of the Migration Act. There is no evidence before me to suggest that the Tribunal did not comply with the requirements and obligations imposed on it by the Act.
5. The appellant has failed to make out ground 1 of the notice of appeal.

## Ground 2

1. By this ground the appellant alleges that the Tribunal ignored material that it was required to look at. The focus of this ground is the appellant’s contention that the primary judge failed to find that the Tribunal misconstrued evidence about the interest he paid on loan monies.

### Appellant’s submissions

1. The appellant submitted that the Tribunal misunderstood his evidence about the interest payable on his loan. His evidence was that he paid 15,000 Pakistan rupees in interest but the Tribunal understood his evidence to be that he paid 15 Pakistan lakh rupees, which I understand would equate to 1.5 million Pakistan rupees. The appellant submitted that the Tribunal’s misunderstanding of his evidence led it to doubt him and that its doubt led to a negative impact on his case. He contended that the Tribunal made the findings at [28]-[40] of its reasons only because of its anterior misunderstanding about his evidence of the interest payable.
2. The appellant submitted that the Tribunal’s questioning of him at the hearing was based on its misunderstanding of his evidence about the interest payable and that the Tribunal member not only misunderstood the evidence at the time of the hearing but misstated it in her reasons provided three months after the date of the hearing. The appellant submitted that the Tribunal’s error in relation to his evidence caused the Tribunal to be confused and adversely affected his credibility. He contended that the Tribunal’s other statements were the product of the underlying misunderstanding of his evidence.

### Consideration

1. As set out at [13] above, the appellant’s central claim before the Tribunal was that he feared harm in Pakistan from a money lender from whom he claimed to have borrowed money. The misunderstanding of the appellant’s evidence by the Tribunal about the amount of interest payable on the monies he said he loaned from the money lender is recorded at [28] of the Tribunal’s reasons where the Tribunal states:

The applicant stated that the money lender asked for the money to be repaid after 2 weeks. He stated that he told Imtiaz Alam that he was able to repay 5 lakh Pakistan rupees. He stated that he repaid 5 lakh Pakistan rupees within 2 days. He stated that after he repaid that money the money lender then said he wanted repayment of the full amount. He stated that 3 days later he repaid the balance of 3 lakh Pakistan rupees **plus 15 lakh Pakistan rupees in interest**. When asked where he got the money from to repay these sums of money, he stated that he did not use the money he borrowed for 2 months and repaid the 5 lakhs from the money he had borrowed. He stated that the money for the second repayment of 3 lakhs Pakistan rupees and the interest of **15 lakhs Pakistan rupees** came from his brothers and father.

(Emphasis added.)

1. The error, as highlighted in the passage extracted from the Tribunal’s reasons, was that the Tribunal understood the appellant’s evidence to be that the interest payable on the loan of 8 lakh Pakistan rupees was 15 lakh Pakistan rupees (or 1.5 million Pakistan rupees), rather than 15,000 Pakistan rupees. For the purposes of the appeal the Minister accepted that the appellant’s oral evidence to the Tribunal as stated to it by the interpreter and by the appellant in English was that the interest paid on the loan was 15,000 Pakistan rupees, not 15 lakh Pakistan rupees.
2. There are two further references to the incorrect amount of interest payable on the loan in the Tribunal’s reasons. They appear at [36] and [40] of the Tribunal’s reasons as follows:

36. The applicant's evidence is that he was unaware of the interest rate on the loan. He stated that he was not told what the interest rate was and did not ask because it was for an emergency and he was stressed. He is an educated man with tertiary qualifications in Pakistan and Australia. His father and older brothers are businessmen. In these circumstances, the Tribunal finds it implausible that he would have borrowed money without knowing what the interest rate was on the loan. The Tribunal also finds it implausible that he would have paid the money lender 15 lakh Pakistan rupees in interest, without knowing what the interest rate was, when that sum was almost double what he had borrowed about 3 weeks earlier.

And:

40. The applicant’s evidence is that when the money lender demanded early repayment of the loan within 14 days or alternatively 15 days of giving him the money, he was able to repay 5 lakh Pakistan rupees within 2 days from the money he had borrowed and not used and repay the balance 3 lakh Pakistan rupees plus 15 lakh Pakistan rupees in interest 3 days later. He stated that he obtained this money from his father and brothers. This tends to indicate that his father and brothers or alternatively relatives either already had the funds or had the capacity to quickly raise a substantial sum of money. This is not consistent with his evidence that he borrowed money because his brothers were not in a financial position to borrow money. It is implausible that he would have borrowed money if his family already had the required funds or quick access to the required funds. It is also implausible that he would have sought the assistance of a child hood friend to borrow money when his father and older brothers were businessmen and would have had some knowledge of where to obtain loans on good terms.

1. The question that arises is whether the Tribunal’s misunderstanding of the interest payable on the loan, as recorded in its reasons at [28], caused its decision to be affected by legal error and if so whether that error went to jurisdiction.
2. In order to answer that question it is first necessary to consider the Tribunal’s reasons.
3. After referring to the incorrect evidence at [28] of its reasons, the Tribunal recorded other evidence given by the appellant. At [34] of its reasons the Tribunal made a finding that the appellant’s evidence was “contradictory and implausible” and that his conduct had not been consistent with his claims. The Tribunal then proceeded to set out its findings in relation to the appellant’s evidence which it considered raised serious concerns in relation to his credibility and the veracity of his claims. They included that:
4. the Tribunal found it implausible that a money lender would have loaned a substantial amount of money to a stranger without requiring some form of security, noting that if the money lender did so he would have had no way of being repaid if the appellant had decided to leave Pakistan after obtaining the loans;
5. the Tribunal found it implausible both that the appellant would have borrowed money without knowing the interest rate payable on the loan and that he would have paid the money lender 15 lakh Pakistan rupees in interest (which was an inaccurate recording of the quantum of interest that the appellant said he had paid) without knowing the applicable rate of interest. The Tribunal noted that the amount of interest was “almost double what he had borrowed about 3 weeks earlier”: at [36];
6. given the appellant’s evidence that he borrowed money because he was facing an emergency the Tribunal would have expected the appellant to have used the money soon after obtaining it to deal with that emergency. The fact that he still had a substantial amount of the monies borrowed two weeks after receiving it tended to indicate that there was no emergency or that he borrowed more money than he required. The Tribunal found it implausible that the appellant would have borrowed money that he did not require: at [38];
7. the Tribunal made findings in relation to the timing of the events relevant to the appellant’s claim. In particular the appellant’s evidence to the Tribunal was that he borrowed the money in January 2015 because his mother was ill, had been admitted to an expensive hospital and his brothers did not have the ability to raise funds for her treatment. However, in a letter dated 18 August 2015 the appellant informed the **Department** of Home Affairs that his mother had passed away on 14 November 2014 indicating that his mother had been diagnosed with a serious illness, admitted to hospital and had passed away before he had obtained the loan: at [39];
8. the appellant gave evidence that when the money lender demanded early repayment of the loan, he had obtained part of the money required to make the repayment and meet the interest payable on loan from his father and brothers. The Tribunal found that this indicated that his father and brothers or other relatives either already had the funds or had the capacity to raise quickly a substantial sum of money which was inconsistent with the appellant’s evidence that his brothers were not able to borrow money. The Tribunal found that it was implausible that the appellant would have borrowed money if his family already had the required funds or quick access to those funds. The Tribunal also found it implausible that the appellant would have asked a friend to assist him to obtain a loan when his father and older brothers were businessmen and would have known where to obtain loans on good terms: at [40];
9. the appellant also made a number of new claims which the Tribunal addressed:
   1. first, the appellant claimed that at the time he made the second loan repayment he had an argument with the money lender over the telephone and the money lender threatened to abduct and kill him which caused him to leave for Australia immediately. However, the Tribunal noted that the appellant subsequently gave contradictory evidence stating that the money lender contacted him in February 2015 after he had received the final payment and asked for more money and the money lender then contacted him on five or six further occasions threatening him. The appellant said that he left Pakistan at the end of February 2015. However, the Tribunal noted that the Department’s Decision Record dated 21 September 2015 indicates that the appellant returned to Australia on 7 February 2015: at [41];
   2. secondly, the appellant claimed that after receiving five or six threatening telephone calls from the money lender he obtained a new telephone number. However the Tribunal found it implausible that the appellant would have obtained a new telephone number in Pakistan if he left there immediately after receiving the first threatening phone call from the money lender as claimed. It also found it implausible that he would have obtained a new telephone number if he was only visiting Pakistan and returning to Australia and that he would have kept answering telephone calls from the money lender after receiving the first threatening call: at [42]; and
   3. thirdly, the appellant claimed that after he obtained the new telephone number the money lender was able to find the new number within two days and to call him on that number on two or three occasions and after that occurred he returned to Australia. The Tribunal noted that this evidence was inconsistent with his earlier evidence that he left Pakistan immediately after receiving the first threatening phone call. The Tribunal raised with the appellant its doubts that the money lender would have been able to find his new telephone number within two days but the appellant maintained that was so as he received a telephone call from him within one and half days of changing the number: at [43];
10. the Tribunal also made findings about a lack of consistency in the appellant’s claims. In particular the Tribunal observed that the appellant’s migration agent, Ms Reddy, and a psychologist who he consulted and who provided a report, Ms Kaye, recorded that the money lender was a member of a militant group known as Sipah-e-Sahaba. The appellant said that he had not identified the extremist organisation to his migration agent or Ms Kaye. However, the Tribunal observed that the appellant’s evidence was inconsistent with the information he provided in his visa application and did not accept that the migration agent and Ms Kaye misunderstood the appellant’s instructions to them: at [44]-[48];
11. the appellant relied on a document dated 14 March 2015 from a Syed Hasnat Hussain Shar, an “Advocate High Court”, who described the appellant as a client who he saw on 19 January 2015 about threats he had received from unknown persons. The Tribunal made a number of observations about the content of that document and the appellant’s evidence more generally. It concluded that in light of its concerns about the document, the many concerns it had in relation to the appellant’s credibility and the appellant’s own evidence that fraudulent documents were provided to the Department to support his application for a Student visa filed in 2007 and his applications for a Protection visa in 2015, it had doubts that the document from Mr Shar was authentic: at [49]-[52];
12. the Tribunal considered the appellant’s applications made first for a Student visa and then for a Protection visa. Having regard to those applications and the material provided in support of them the Tribunal found that the appellant intentionally provided false information and bogus documents to the Department to obtain a Protection visa and was not satisfied that he was not complicit with his migration consultant in Pakistan in providing false information and bogus documents to the Department to obtain his Student visa in 2007. The Tribunal raised these issues and its concerns in relation to the appellant’s credibility and the veracity of his claims with the appellant but did not accept his subsequent explanation: at [54]-[60]; and
13. the Tribunal considered the whole of the appellant’s immigration history in Australia and an application he made for a permanent visa to immigrate to Canada which was refused in 2012. It noted that the appellant’s immigration history showed that he has a strong desire to live in a western country and that he applied for a number of other visas to obtain permanent residence in Australia prior to applying for a Protection visa. The Tribunal raised with the appellant its concern that his application for a Protection visa was a last resort to obtain permanent residence in Australia. In response the appellant informed the Tribunal that “everyone wants a good life with a higher education and a good job” and that with good skills “he could go anywhere”. He also said that applying for a visa to immigrate to Canada did not mean that he wanted to live there. The Tribunal noted that the appellant’s response did not address the issue raised with him or alleviate the Tribunal’s concerns: at [64]-[65].
14. It is next necessary to consider the way in which the Tribunal’s misunderstanding of the appellant’s evidence about the interest payable might be characterised so as to lead to a conclusion that the Tribunal made a legal error and, if so, whether that error was material. In the absence of any particularisation by the appellant, the Minister drew my attention to the authorities set out below.
15. In *SFGB v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 77 ALD 402; [2003] FCAFC 231; 77 ALD 402 a Full Court of this Court (Mansfield, Selway and Bennett JJ) considered an argument that the Tribunal in that case made a jurisdictional error because there was no information before it from which it could realistically draw its conclusion that there was no government in control in the country from which the appellant came that could or would protect the appellant from persecution for a Convention reason. At [19] the Full Court said that if the ground was made out it would be sufficient to establish that the Tribunal had made a jurisdictional error. The Full Court continued:

If the Tribunal makes a finding and that finding is a critical step in its ultimate conclusion and there is no evidence to support that finding then this may well constitute a jurisdictional error: see *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 355-357.

1. In *DAO16 v Minister for Immigration and Border Protection* (2018) 258 FCR 175;[2018] FCAFC 2 at [30] a Full Court of this Court (Kenny, Kerr and Perry JJ) summarised the principles relating to legal unreasonableness in the context of a ground of appeal which alleged that the Tribunal in that case had made findings of fact without any supporting probative evidence and that the Tribunal had applied an illogical process of reasoning to probative evidence. In doing so their Honours relevantly said (at [30(1)] and [30(4)]):
2. While findings as to credit are generally matters for the administrative decision-maker, this does not mean that such findings as to credit are beyond scrutiny on judicial review: *CQG15 v Minister for Immigration and Border Protection* (2016) 253 FCR 496 (*CQG15*) at [37]-[38] (the Court). The question of whether a credibility finding is tainted by jurisdictional error is a case specific inquiry, and is not assessed by reference to fixed categories or formulae (*ARG15 v Minister for Immigration and Border Protection* (2016) 250 FCR 109 (*ARG15*) at [83](b)). In each case it is necessary to analyse in detail what the decision-maker has decided: *Minister for Immigration and Citizenship v SZRKT* (2013) 212 FCR 99 (*SZRKT*) at [77] (Robertson J).

…

(4) Findings or reasoning along the way to reaching a conclusion by the decision-maker that are illogical or irrational may establish jurisdictional error (*SZMDS* at [132] (Crennan and Bell JJ)). In this regard, with respect to the significance of an illogical or irrational finding as to credit to the administrative decision necessary to establish jurisdictional error, Wigney J explained in *Minister for Immigration and Border Protection v SZUXN* (2016) 69 AAR 210 (in a passage approved in *CQG15* at [60]) that:

56 An irrational or illogical finding, or irrational or illogical reasoning leading to a finding, by the Tribunal that the review applicant was not a credible or honest witness may in some circumstances lead to a finding of jurisdictional error. That would particularly be the case where the adverse credibility finding was critical to the Tribunal’s decision that it was not satisfied that the applicant met the criteria for the grant of a visa. Whilst it is frequently said that findings as to credit are entirely matters for the Tribunal, such findings do not shield the Tribunal’s decision-making processes from scrutiny …

(Citations omitted.)

1. The Minister also drew my attention to the decision in ***Gill*** *v Minister for Immigration and Border Protection* (2017) 250 FCR 309 where a Full Court of this Court (Logan, Griffiths and Moshinsky JJ) found that the Tribunal had fallen into jurisdictional error in its fact finding in relation to the genuineness of a reference and the appellant’s credibility. At one level the facts in *Gill* boresome analogy to the facts before me.
2. In that case the appellant had applied for a skilled visa and had nominated his occupation as a “cook”. Among other things he provided details of his employment with an entity called “Oakleigh Catering JMark” along with a description of the duties he performed in his role as an employee of that organisation. He also submitted a written reference from Oakleigh Catering which described his duties and responsibilities. On appeal it was not in dispute (and the primary judge had found) that the Tribunal had misheard the appellant’s evidence that he cooked “rissoles” as evidence that he cooked “risotto”.
3. At [45] Griffiths and Moshinsky JJ (with whom Logan J agreed) identified two central issues in the appeal. Relevantly, the first was whether the primary judge fell into appealable error in rejecting the appellant’s claim that the Tribunal’s decision was vitiated by jurisdictional error.
4. Commencing at [69] Griffiths and Moshinsky JJ addressed the findings concerning risotto. Their Honours noted that the primary judge found that the appellant used the term “rizolos” on several occasions which the Tribunal misunderstood as a reference to “risotto” but that this misunderstanding did not give rise to jurisdictional error. Griffiths and Moshinsky JJ held that the primary judge erred. They explained why that was so at [70]-[72] as follows:

70 Rissoles were included among the non-exhaustive list of dishes mentioned in the work experience letter, but risotto was not. The Tribunal’s misunderstanding that the appellant was referring to “risotto” was an important part of the Tribunal’s reasoning for concluding that the work experience letter was not genuine and the appellant was not a credible witness. The Tribunal’s incredulity on this matter related to the appellant’s evidence that he prepared risotto using rice and flour. When the Tribunal member repeatedly asked the appellant to say what kind of “risottos” were on the menu, on three separate occasions he said “Italian”. There was a total breakdown in communication between the appellant and the Tribunal on this subject matter in that the appellant was evidently referring to Italian rissoles, while the Tribunal member was talking about Italian risottos. The miscommunication was perhaps exacerbated by the repeated reference to the dish being “Italian”.

71 The mishearing and miscommunication formed part of the basis for the Tribunal’s adverse conclusions concerning the genuineness of the work experience letter and the appellant’s credibility. The Tribunal’s findings concerning risotto were not supported by logical grounds and lacked any probative evidence. They were predicated on a fundamental misunderstanding of the dish to which the appellant’s oral evidence related. Because the Tribunal erroneously believed that the appellant’s evidence was directed to risottos, it disbelieved him when he said that he prepared the dish, which he described as “rizolos”, using rice and flour. Moreover, this error also contributed to the Tribunal’s adverse credibility finding based upon its belief that the appellant could name only one of the popular dishes served at the Bistro.

72 Applying the approach of Crennan and Bell JJ in *SZMDS*, we consider that it was not open to the Tribunal to make the adverse findings which it did relating to this aspect of the appellant’s evidence. That was because the Tribunal had a critical misunderstanding that the appellant’s evidence was directed to “risottos” when, in fact, it was not.

1. At [79]-[81] of *Gill* Griffiths and Moshinsky JJ addressed the Minister’s argument that any erroneous fact finding by the Tribunal about the appellant’s evidence were not material errors because the Tribunal relied upon other matters in concluding that the work experience letter was not genuine and that the appellant’s evidence was not credible. Their Honours rejected that submission for two reasons.
2. First, because the Tribunal gave particular prominence to the adverse findings relating to the appellant’s evidence that he prepared risotto using rice and flour and that he crumbed schnitzels with baking powder.
3. Secondly, because their Honours found that, on a fair reading of the Tribunal’s reasons, “its reasoning process leading up to its ultimate conclusion that the work experience letter was bogus and the appellant’s evidence lacked credibility was to weigh, on the one hand, all the adverse findings … against, on the other hand, other matters… which may have explained the deficiencies in the appellant’s oral evidence”. Their Honours concluded that, having regard to the weighing exercise, it could not be said that it would have produced the same outcome if the Tribunal had not taken into account its illogical and erroneous findings of fact relating to risotto, the crumbing of chicken schnitzel and the appellant’s identification of the most popular dishes.
4. Their Honours concluded that this was not a case where illogical findings of fact were not material to the Tribunal’s ultimate conclusions: *Gill* at [82].
5. Turning to the present case, the misunderstanding as to the amount of interest payable by the appellant on the loan was a factual error. However, in my opinion, that misunderstanding did not result in the Tribunal making a legal error. That is for the following reasons.
6. First, it is apparent from the matters set out at [43] above that the Tribunal’s concerns about the amount of interest claimed to have been paid was not a feature of the reasons given by the Tribunal to support its credibility finding. The Tribunal set out a considerable number of concerns that caused it to reject the appellant’s credibility. They related to the appellant’s central claim, namely his fear of returning because he had loaned money from a money lender, as well as other matters not connected to the facts underpinning that claim, namely the provision of false information in support of his various visa applications and his immigration history.
7. Secondly, to the extent the quantum of interest may have played a role in the Tribunal’s findings in relation to the appellant’s credit (at [34] of its reasons), it did not do so in a way that was central to those findings. The Tribunal referred on two occasions to the incorrect sum of interest.
8. The first reference is at [36] of the Tribunal’s reasons (see [40] above) in connection with its finding that it was not plausible that the appellant would have borrowed interest without knowing the applicable interest rate. Relevantly the reference to the amount of interest paid was not central to the Tribunal’s finding which went to the appellant’s lack of knowledge of the rate of interest, as opposed to its quantum.
9. The second reference is at [40] of the Tribunal’s reasons (see [40] above). The Tribunal’s ultimate finding in that part of its reasons was that it was implausible that the appellant would have borrowed money if his family already had the required funds or quick access to funds and that it was implausible that he would have sought the assistance of a childhood friend to borrow money when his father and brothers were businessmen who would have known where to obtain loans on good terms. The quantum of interest payable by the appellant plays no role in those findings.
10. Thirdly, the Tribunal’s finding about the sum of interest payable was not a critical step in its ultimate conclusion. The finding at best played a minimal role in the Tribunal’s reasoning. Its ultimate conclusion about the appellant’s credibility did not rely in any significant way on the anterior finding about the quantum of interest.
11. Finally, this case can be distinguished on its facts from the decision in *Gill*. Here the Tribunal misunderstood one aspect of the appellant’s evidence. As I have already observed, that misunderstanding did not play a central role in the Tribunal’s findings nor did it have any flow on effect to its other findings about the appellant’s claim that he had borrowed money from a money lender. That is, the Tribunal considered different facts about that claim which did not relate back, or have any connection to, the quantumof interest payable on the loan.
12. Given my finding that the Tribunal did not fall into legal error it is not necessary for me to consider the question of materiality.
13. For those reasons ground 2 is not made out.

## Ground 3

1. By this ground the appellant contends that decisions were made without considering the issues raised.
2. The appellant provided no particulars and made no submissions in relation to this ground.

### Consideration

1. If this ground concerns the primary judge’s decision then I accept, as the Minister submitted was the case, that his Honour did not address ground 2 in the manner addressed above. In the Federal Circuit Court the appellant submitted that the Tribunal had misinterpreted the quantum of interest paid. The primary judge failed to address that aspect of the ground. However, given that the parties made comprehensive submissions about the ground and I have now considered it there would be no utility in remitting the matter back to the primary judge.
2. If ground 3 relates to the Tribunal’s reasons, in the absence of particulars, it is somewhat difficult to address this ground in a meaningful way. However, as the Minister submitted, the issue before the Tribunal was whether the appellant satisfied the criteria for the grant of a Protection visa. It is clear from the Tribunal’s reasons that it rejected the appellant’s credibility and all of his material claims. It set out in its reasons the documentary evidence that was before it and the appellant’s oral evidence and considered the totality of that evidence. There is nothing before me to suggest that the Tribunal did not consider all of the issues raised before it.
3. Ground 3 is not made out.

## Other matters

1. As set out at [43(7)] above, the Tribunal observed that Ms Reddy and Ms Kaye recorded that the money lender was a member of a militant group known as Sipah-e-Sahaba. The appellant told the Tribunal that he had not identified the extremist organisation to Ms Reddy or Ms Kaye.
2. At the hearing the appellant submitted that he asked Ms Reddy to provide him with a copy of the letter she had prepared in support of his visa application and that Ms Reddy advised that the letter was “her property” and that she was not able to show it to him. The appellant contended that Ms Reddy refused to provide him with a copy of the letter until around 90 minutes prior to his interview with the Department. The appellant referred to an email sent by Ms Reddy to him but did not seek to tender the email into evidence.
3. It is not clear to which ground of appeal, if any, these submissions relate. As the Minister submitted, they are an attempt to re-agitate an issue that was addressed during the Tribunal hearing, namely that he never informed either Ms Reddy or Ms Kaye of the identity of the militant group to which the money lender belonged. The Tribunal did not accept his evidence in that regard. It is not open to this Court to reconsider that finding which, in any event, does not directly impact any of the grounds of appeal relied on by the appellant.

# conclusion

1. For those reasons the appeal should be dismissed. As the appellant has been unsuccessful he should pay the Minister’s costs limited to the appeal. The Minister is not entitled to his costs associated with the application for leave to appeal on which the appellant was successful. Given the Minister’s consent to that application, there should be no order for costs in relation to it.
2. I will make orders accordingly.

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| I certify that the preceding seventy-three (73) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Markovic. |

Associate:

Dated: 15 December 2022