Federal Court of Australia

BBY21 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCA 68

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| Appeal from: | *BBY21 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCCA 1768 |
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| File number: | NSD 832 of 2021 |
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| Judgment of: | **BROMWICH J** |
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| Date of judgment: | 4 February 2022 |
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| Catchwords: | **MIGRATION** – appeal from Federal Circuit Court of Australia (now Division 2 of the Federal Circuit and Family Court of Australia) – whether primary judge erred in assessing grounds of review from a decision of the Administrative Appeals Tribunal to affirm a decision of a delegate of the first respondent to refuse the appellant a Protection (subclass 866) visa – where appellant previously convicted of drug trafficking in Australia – whether Tribunal erred in not being satisfied that there was an outstanding warrant for the appellant’s arrest in Singapore, and whether primary judge erred in finding that it was open for the Tribunal to reach the conclusion that it did – held: it was open for the Tribunal to reach the conclusion it did and therefore the primary judge did not err – whether the Tribunal erred by not making an inquiry of the New South Wales Serious Offenders Review Council about any warrant, and subsequently the primary judge in not finding jurisdictional error in failing to make such an inquiry – held: the Tribunal was not required to make such an inquiry – whether Tribunal committed a jurisdictional error in misunderstanding the significance of the evidence of two witnesses, and the primary judge subsequently erred by not finding any jurisdictional error – held: the Tribunal did not fail to understand the evidence – appeal dismissed |
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| Legislation: | *Migration Act 1958* (Cth) s 5(1) |
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| Cases cited: | *DAO16 v Minister for Immigration and Border Protection* [2018] FCAFC 2; 258 FCR 175  *EKN17 v Minister for Immigration and Border Protection* [2019] FCA 1135  *Karan v Minister for Home Affairs* [2019] FCA 478  *Karan v Minister for Home Affairs* [2019] FCAFC 139  *Kaur v Minister for Immigration and Border Protection* [2017] FCAFC 184; 256 FCR 235  *Minister for Immigration and Citizenship v SZIAI* [2009] HCA 39; 259 ALR 429 |
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| Division: |  |
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| Registry: |  |
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| National Practice Area: | Administrative and Constitutional Law and Human Rights |
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| Number of paragraphs: | 23 |
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| Date of hearing: | 2 November 2021 |
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| Counsel for the Appellant: | B Zipser |
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| Counsel for the First Respondent: | D J McDonald-Norman |
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| Solicitor for the First Respondent: | HWL Ebsworth |

ORDERS

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|  | | NSD 832 of 2021 |
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| BETWEEN: | BBY21  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: | BROMWICH J |
| DATE OF ORDER: | 4 February 2022 |

THE COURT ORDERS THAT:

1. The notice of appeal be treated as asserting grounds of appeal corresponding to the grounds of review ultimately argued before the primary judge, and asserting error on the part of his Honour in addressing those grounds of review.
2. The appeal be dismissed.
3. The appellant pay the first respondent’s costs as assessed or agreed.

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

REASONS FOR JUDGMENT

BROMWICH J:

1. The appellant, a citizen of Singapore and now in his early 40s, arrived in Australia in December 2006 when he was in his late 20s. He was subsequently convicted and sentenced to lengthy terms of imprisonment in New South Wales on charges of trafficking commercial quantities of drugs and in Victoria of supplying large commercial quantities of drugs. He was in prison continuously in Victoria from 30 November 2006 and then in New South Wales until 17 October 2020, when he was released on parole and taken into immigration detention.
2. Prior to his release from prison, the appellant sought to be returned to Singapore, but on 26 October 2020 applied for a Protection (subclass 866) visa upon the basis of the fears he had as to what would happen to him upon his return. That visa was refused by a delegate of the first respondent, the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs on 17 December 2020. The delegate’s decision was affirmed by the second respondent, the Administrative Appeals Tribunal, on 23 March 2021.
3. An application for judicial review of the Tribunal’s decision was dismissed by a judge of the Federal Circuit Court of Australia (now Division 2 of the Federal Circuit and Family Court of Australia) on 4 August 2021. The appellant appeals from the primary judge’s decision. His notice of appeal, in keeping with his application for judicial review, does not identify any clear grounds of appeal. However, the Minister is content for the notice of appeal to be treated as asserting grounds of appeal corresponding to the grounds of review ultimately argued before the primary judge, and asserting error on the part of his Honour in addressing those grounds of review.
4. In his protection visa application, interviews and further information given in support of that application, the appellant claimed that he was wanted by the Singapore police because he assaulted someone there in 2006 and had fled to Malaysia. He said that he had assaulted someone who had molested his wife. He said that if he went back to Singapore he would be charged and sentenced to imprisonment for 10 years and given 24 strokes of a cane because he had previously been convicted of rioting and sentenced to 3 years imprisonment and 12 strokes of a cane.
5. The appellant also said that he was involved with drug smuggling activities for an international crime syndicate based in Singapore and Malaysia, and feared consequences from what he had said about that to authorities in Australia and during his criminal trial. He said he feared being in danger of being attacked, tortured or killed.
6. The substance of the appellant’s claims were maintained and elaborated upon before both the delegate and the Tribunal. The sentencing judge in the Sydney District Court in 2011 also referred to the appellant and his wife moving from Singapore after a warrant had issued for his arrest following him assaulting a man who had sexually assaulted or harassed his wife, being information that must have been supplied to the District Court by the appellant.

## Ground 1

1. The Tribunal dealt with the arrest warrant aspect of the appellant’s claims as follows:

[83] The applicant claims he cannot return to Singapore as he faces charges and a warrant has been issued by the authorities in Singapore for his arrest. His evidence about what charge was vague and unconvincing. The applicant claims he fled Singapore as he stabbed a drug dealer who molested his ex-wife. When asked what the charges were, he responded that it was for armed robbery. When asked for an explanation as to why he would be charged with armed robbery if he claims that he stabbed another man he responded that he did not know.

[84] The applicant when asked why he had earlier told authorities in Australia he wanted to return to Singapore he responded it was because he wanted to stay in Manus correctional centre and not be put in segregation. The Tribunal does not accept this as a persuasive reason as to why he had not mentioned any concerns about an outstanding warrant. The applicant at interview with the delegate claimed he had been told about the arrest warrant in Singapore in August 2020 by an individual from the NSW Serious Offenders Review Council.

[85] The Tribunal sent a letter to the applicant after the hearing to provide him further time to comment on the inconsistencies in his evidence in relation to an outstanding warrant. He responded with further inconsistencies in which he stated there was a warrant, he then stated that a lawyer friend told him there was no warrant or charges yet. In relation to discrepancies with what he discussed with parole and other authorities when he told them at first there was no warrants or criminal justice matters, he stated that he lied to them as he feared segregation. He claims that the chairperson of Serious Offenders Review Council told him there was an outstanding warrant. The select pages the applicant had previously provided to the Tribunal did mention a warrant however it is the view of the Tribunal that this information was provided in interview by the applicant to the authors of the reports provided by the Council.

[86] The applicant had two witnesses give evidence. They are friends of the applicant and repeated that they had been told that he was in danger from the Triads. They were not sure of the offences, where they occurred or any other details. The applicant when commenting on their evidence agreed it was vague and they may not have understood the question. The Tribunal rejects that they did not understand the evidence as they both spoke English fluently. The Tribunal accepts that the applicant’s friends wanted to help and assist him, but their evidence alone adds little to the overall evidence presented.

[87] The applicant was unable to provide any copy of the warrant. When queried he said he tried to get a copy but his friend who was a lawyer in Singapore could not help him. The Tribunal provided further time to the applicant for him to provide information on the warrant he again gave inconsistent responses, he stated there was a warrant and then in the same statement he stated that his lawyer friend told him there was no warrant as he had not been charged. When queried how he could have secured a visa to leave Singapore and Malaysia to come to Australia he responded that he could because the man he stabbed did not die. He later said it was organised by his criminal connections in Malaysia.

[88] The Tribunal notes that there are references to an outstanding warrant in the evidence provided by the applicant. The references in sentencing documents and parole documents appear to be general references from information the applicant provided to those authorities. There is no independent probative evidence to indicate that Singaporean authorities are pursuing any charges or warrant.

[89] The applicant did not provide the Tribunal any copy of a warrant. The Tribunal has outlined above the inconsistent evidence provided in relation to whether there is an outstanding warrant. The applicant in his application for protection states he speaks to his brother in Singapore twice a week. However, when queried about providing a copy of the warrant at hearing he gave an unconvincing response that his lawyer could not get a copy, and then in later submissions that there was no warrant as he [had] not been charged.

[90] The applicant claims he fled Singapore as he was wanted for assaulting a man. The Tribunal noted that in his application for protection he stated he was able to travel to China, Thailand and Malaysia in 2006. When queried how he was able to leave Singapore if there was an outstanding warrant, he simply replied his friend in Malaysia helped him. The Tribunal is not satisfied that if there was an outstanding warrant or he was wanted by authorities in Singapore he would have been able to travel extensively throughout 2006.

[91] If the applicant was to return to Singapore and face charges those charges relate to criminal acts the applicant has participated in. He agreed that it was a law of general application and all persons who committed those crimes would face the same penalties and face the justice system in Singapore.

[92] There is nothing to indicate he was singled out for any characteristic of his or discriminated against.

[93] The Tribunal has considered all the information and evidence provided by the applicant and is not satisfied that there is an outstanding warrant or that criminal elements connected to Triads and criminal syndicates are threatening the applicant with death or any serious harm.

1. The Tribunal applied the same reasoning to complementary protection at [108], not being satisfied that there was any real risk of the kinds of significant harm set out in s 5(1) of the *Migration Act 1958* (Cth). That finding necessarily meant that there was no need to consider the character of caning for that purpose, because the Tribunal was not satisfied that would happen.
2. The primary judge addressed the judicial review ground advanced in respect of the issue of the warrant as follows:

[53] Ground one contends that the Tribunal fell into error at paragraphs 88 and 93 of its decision, that it was not satisfied there was an outstanding warrant for the applicant’s arrest at Singapore in relation to the stabbing of a man or otherwise. As set out above, the Tribunal recorded the various versions of events given to it by the applicant together with the basis upon which he said a warrant was outstanding for his arrest in Singapore. The Tribunal conducted a forensic examination of the applicant’s evidence which it found to be vague, improbable, inconsistent and unsupported by available country information. This included the applicant initially stating to Australian authorities that there was no warrant outstanding for him and that he wished to be removed to Singapore. The Court is satisfied that the conclusions of the Tribunal as to the credibility of the applicant, were open to it on the evidence that was before it and for the reasons it gave. Courts need to exercise considerable care, in overturning matters that are based on credibility, given that the Court has not had the opportunity of hearing from the applicant directly and putting matters to him by way of cross examination. The evidence of the applicant’s two friends at its highest, could be described as first or possibly second hand hearsay. While it did not reject outright their evidence the Tribunal rightly gave their evidence no weight. The Court notes that the Tribunal gave the applicant the opportunity of clarifying matters by way of writing him a letter, setting out its concerns prior to making its final decision. The applicant’s responses were less than convincing and were inconsistent with previous evidence. It was open to the Tribunal to come to the conclusion that it did, based on the applicant’s evidence.

[54] By way of caution, the Court notes that the Tribunal’s findings at paragraphs 91-92 of its decision, did not apply to the applicant’s claim for complimentary protection. The Tribunal accepted, as pointed out by the respondent, that caning could be seen as being cruel or inhuman treatment or punishment. However, as the Tribunal found as there was no warrant outstanding for the applicant, he was not at significant risk of being caned should he be returned to Singapore. Again, this was a finding that was open to the Tribunal based on the evidence before it and for the reasons it gave. Ground one has no merit. There is no error in the manner in which the Tribunal dealt with the evidence before it.

1. This ground of appeal asserts that a significant part of the reason why the Tribunal rejected the appellant’s claim concerning the warrant was because there was no independent probative evidence to indicate that Singapore authorities were pursuing any charges or warrant. It is submitted that this places an impermissibly high standard of proof upon the appellant. Moreover, the appellant submits, the Tribunal had failed to appreciate the significance of the fact that his claim about the existence of a warrant was long-standing, rather than being any recent invention. The appellant asserts that the primary judge failed to appreciate that the Tribunal had not sufficiently considered the features in support of his claim, citing *EKN17 v Minister for Immigration and Border Protection* [2019] FCA 1135 per Thawley J at [91] as to the need to consider both material in favour of and against a claim to properly exercise jurisdiction. The appellant also submits that the primary judge had failed to appreciate that while the Court must exercise care in overturning findings based on credibility, such findings are not immune from review: *DAO16 v Minister for Immigration and Border Protection* [2018] FCAFC 2; 258 FCR 175 per Kenny, Kerr and Perry JJ at [30].
2. I am unable to accept the appellant’s characterisation of the Tribunal’s reasons, and therefore unable to accept that there was any error on the part of the primary judge. As the Minister correctly submits in substance, the Tribunal’s adverse conclusion was not solely or even principally because of the absence of independent probative evidence. Rather, it was a feature that assumed some contributory significance because of the unsatisfactory account given by the appellant. The absence of supporting evidence as an additional reason for not accepting that a warrant was still in place or that charges were still being pursued, does not negate the appellant’s lack of credit. The Tribunal did not err, let alone in a jurisdictional way, by finding that shortcomings in the appellant’s account were not overcome by other evidence. It follows that his Honour also did not err in this manner. This ground of appeal must therefore fail.

## Ground 2

1. Part of the material that was before the Tribunal included a claim by the appellant that, on 17 August 2020, shortly before the conclusion of his non-parole period, he had been told or reminded by the chair of the New South Wales Serious Offenders Review Council (**SORC**) about the outstanding warrant in Singapore. The substance of this ground of review before the primary judge, and consequent effective ground of appeal, is that this was enough to trigger a jurisdictional obligation on the part of the Tribunal to make an inquiry of the SORC. This ground relies upon *Minister for Immigration and Citizenship v* ***SZIAI*** [2009] HCA 39; 259 ALR 429 per French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ at [25]. That paragraph is best read with the context of [26] as well, as it illuminates the nature of the inquiry that the High Court had in mind (footnote omitted):

[25] Although decisions in the Federal Court concerned with a failure to make obvious inquiries have led to references to a “duty to inquire”, that term is apt to direct consideration away from the question whether the decision which is under review is vitiated by jurisdictional error. The duty imposed upon the tribunal by the Migration Act is a duty to review. It may be that a failure to make an obvious inquiry about a critical fact, the existence of which is easily ascertained, could, in some circumstances, supply a sufficient link to the outcome to constitute a failure to review. If so, such a failure could give rise to jurisdictional error by constructive failure to exercise jurisdiction. It may be that failure to make such an inquiry results in a decision being affected in some other way that manifests itself as jurisdictional error. It is not necessary to explore these questions of principle in this case. There are two reasons for that.

[26] The first reason is that there was nothing on the record to indicate that any further inquiry by the tribunal, directed to the authenticity of the certificates, could have yielded a useful result. There was nothing before the Federal Magistrates Court or the Federal Court to indicate what information might be elicited if the tribunal were to undertake the inquiry which was said to be critical to the validity of its decision. … The second reason is that the response made by SZIAI’s solicitors to the tribunal’s letter of 14 January 2008 itself indicated the futility of further inquiry. …

1. The key features that need to be present for there to be a jurisdictional error in not making an inquiry are therefore that the putative inquiry be obvious; that it be about a critical fact; that the fact be easily ascertained; and, that the inquiry be capable of supplying a sufficient link to the outcome so that not making it constitutes a failure to conduct the review required by law. It follows that there must something on the record, or otherwise before the Court, to indicate that such an inquiry could have yielded a useful result. In *Karan v Minister for Home Affairs* [2019] FCAFC 139, the Full Court (Rares, Griffiths and Burley JJ) at [29]-[32] upheld the conclusion by Robertson J at first instance (*Karan v Minister for Home Affairs* [2019] FCA 478) that there was nothing to indicate that such an inquiry could have yielded a useful result.
2. In *Kaur v Minister for Immigration and Border Protection* [2017] FCAFC 184; 256 FCR 235, Dowsett, Pagone and Burley JJ, after quoting from *SZIAI* at [25], observed at [33]:

There is no general obligation to make inquiries, but as Kenny J noted in *Minister for Immigration and Citizenship v Le* (2007) 164 FCR 151 at [60], an obligation may arise in “rare or exceptional circumstances”. The mere fact that it may have been reasonable to make an inquiry does not mean the lack of such an inquiry amounts to a jurisdictional error; *SZMJM v Minister for Immigration and Citizenship* [2010] FCA 309 at [30] (Bennett J); *MZZGB v Minister for Immigration and Border Protection* [2014] FCA 1052 at [63] (White J); *Singh v Minister for Immigration and Border Protection* [2017] FCA 1285 at [64] (Murphy J).

1. The appellant submits that whether or not there was an outstanding arrest warrant in Singapore arising from the assault incident, and whether or not there was a risk of him being charged in relation to that incident, were “*critical facts*”. Therefore, he submits that the making by the Tribunal of an inquiry with the SORC was “*an obvious inquiry about a critical fact, the existence of which is easily ascertained*” (*SZIAI* at [25]), such that the Tribunal fell into jurisdictional error by failing to make this inquiry with the SORC. The appellant submits that as the chair of the SORC had been identified, the Tribunal could easily have obtained a written authority from the appellant to contact and seek information from the chair concerning the arrest warrant with the benefit of that authority. While the appellant acknowledges that the chair was not bound to provide that information, he submits that it is likely he would have responded. He submits that the principle stated in *SZIAI* is not limited to inquiries which were bound to obtain an answer, as that goes further than the High Court identified.
2. The primary judge addressed the judicial review ground advanced in respect of the issue of an inquiry being made of the SORC as follows:

[55] Ground two asserts that the Tribunal should have made an enquiry with the SORC based on the claim by the applicant that he was told by the Chair of that body that there was an outstanding warrant for him in Singapore. It was submitted that this was a critical fact and that the Tribunal failed to make an obvious enquiry about it. The first respondent submitted that it was for the applicant to prove that he met the requirements for a Protection visa. It was submitted that will only be in “rare and exceptional circumstances”: (see; *Kaur* at [33]). That jurisdictional error would arise from that a failure to make such an enquiry.

[56] What is clear from a perusal of the decision record and all of the material recorded by the Tribunal is that the applicant himself, was inconsistent as to whether or not there was a warrant for him in Singapore. No independent corroboration of that fact existed. At best, it was an unsupported assertion by the applicant which lacked any real evidentiary foundation. The Court accepts that the claim of the outstanding warrant was not a recent invention. However, in the circumstances of this case, the Court is not convinced that this was such an obvious enquiry that could be easily ascertained. There is no material before the Court to indicate the basis upon which the Tribunal could have sought the information and, even if it had that the information would be provided.

[57] The Tribunal noted that the applicant had been able to leave Singapore, according to him, while there was an outstanding warrant for him. Further, at paragraph 87 of its decision, the Tribunal noted that when the applicant stated that he tried to obtain confirmation of the warrant, a lawyer friend in Singapore told him there was no warrant as he not been charged. Further, the applicant’s evidence itself was inconsistent as to whether he faced a charge of armed robbery, assault, or stabbing. The Tribunal at paragraph 89 of its decision concluded that the applicant’s evidence was unconvincing in that his lawyer could not even get a copy.

[58] In all the circumstances, the Court is not satisfied that it was incumbent on the Tribunal to make the enquiry complained about in the ground of appeal. Given the plethora of contradictory claims by the applicant and the finding by the Tribunal that he lacked creditability, the Court does not accept that the Tribunal fell into jurisdictional error by not making the enquiry with the SORC. Further, how it is that the SORC might be aware of a warrant for the applicant’s arrest in Singapore when as at that time, Singapore had not sought to extradite him on what he claimed were serious matters that would result in imprisonment for 10 years and 24 strokes of the cane, was a matter that the Tribunal found at paragraph 39 of its decision, the applicant could give no explanation. Further, the Tribunal took the time to provide the applicant with a letter that outlined its concerns as to the existence or not of the warrant. It was open to the applicant to provide that letter to the SORC and request confirmation. The applicant did not do so. The issue is not such a rare and exceptional circumstance that the failure to make the enquiry amounts to jurisdictional error. It was for the applicant to present his case and evidence and for the Tribunal to rule on it. This is precisely what they did. Ground two has no merit.

1. The submissions for the appellant do not identify any error in the primary judge’s reasoning or conclusions, and none are apparent. It is not enough to point to steps that could have been taken and inquiries that could have been made, and to speculate about what such inquiries might have produced. This was a suggested inquiry to be directed to a parole-related authority in Australia about events in Singapore some 15 years ago, where the only information that the authority apparently had, came from the appellant. There was nothing self-evident about the utility of the inquiries, especially in circumstances in which the appellant had been told by the SORC that they could not assist him as he was no longer in prison, a telling indicator that such an inquiry would have been futile. Moreover, the appellant had been inconsistent as to whether such a warrant had been issued against him, as conceded by his counsel. In those circumstances it was incumbent upon the appellant to demonstrate that such an inquiry could have yielded a useful result. In the absence of such a demonstration, there was no error on the part of his Honour in not being satisfied that this fell within the limiting description of a rare or exceptional circumstance in which failure to make an inquiry constitutes a jurisdictional error.
2. This ground of appeal must therefore fail.

## Ground 3

1. As noted above, the claims originally made by the appellant included a claim that if he returned to Singapore he would be harmed by the international criminal syndicate with which he had been involved. In support of that claim, two witnesses gave evidence. The Tribunal summarised their evidence, and the context for that evidence, as follows:

[54] The Tribunal pointed out that the applicant has a significant criminal record, he responded that he has done 15 years in prison in Australia. The Tribunal pointed out that there would be other members of the Triads in prison. He said there were, but he did not get involved.

[55] The Tribunal asked again why he had not been harmed in Australia if the criminal syndicate was wanting to harm him. He agreed they could.

[56] The Tribunal then took evidence from a witness.

[57] The witness was a friend of the applicant’s. His evidence was that he heard from others that the syndicate wants to hurt his friend. The witness said he was previously in prison in Singapore and had been involved with the criminal syndicate. He said he had known the applicant for 20 years. The Tribunal asked why the syndicate could not hurt the applicant in Australia. He responded that he was not sure about that. He stated that the Singapore police want him. The Tribunal asked for more detail about why they want the applicant. He responded that something may have happened in Australia.

[58] The Tribunal asked the applicant if he wanted to comment on the evidence provided by his friend. He said his friend may not have understood the questions. The Tribunal stated that he spoke English and that in Singapore people speak English as they were taught in school.

[59] The applicant agreed and said words to the effect his friend did not seem to know if he was wanted or whether there was a warrant as he was confused.

[60] The Tribunal spoke to his second witness. The second witness said the applicant used to be in a secret society. He said that he thinks the applicant got into some trouble and he fled Singapore. The witness said he (the witness) has a criminal record and had previously been to prison in Singapore however he was no longer involved. The Tribunal asked what it was he wanted to tell the Tribunal. He responded that from what the applicant told him he was in trouble some 15 years back with the drug syndicate however he said that he could not confirm this.

[61] He said he did not know what the applicant did, his evidence is that he heard from other people that the syndicate want to get him.

1. The Tribunal’s conclusion about that evidence was as follows (at [86]):

The applicant had two witnesses give evidence. They are friends of the applicant and repeated that they had been told that he was in danger from the Triads. They were not sure of the offences, where they occurred or any other details. The applicant when commenting on their evidence agreed it was vague and they may not have understood the question. The Tribunal rejects that they did not understand the [question] as they both spoke English fluently. The Tribunal accepts that the applicant’s friends wanted to help and assist him, but their evidence alone adds little to the overall evidence presented.

1. The primary judge addressed the judicial review ground advanced in respect of the issue of the evidence of the appellant’s witnesses as follows (at [59]):

Ground three is a complaint in relation to the findings of the Tribunal in relation to the two witnesses that were called. As the Court found above, the witnesses’ evidence could at best be described as first or second hand hearsay. As the Tribunal found at paragraphs 57, and 60 to 61 of its decision, the applicant’s witnesses were not sure of the nature of the offences, when they occurred, or in respect of other significant details. Even the applicant agreed that their evidence was vague and they may not have understood the questions. The weight to be given to individual pieces of evidence, subject to legal unreasonableness, is a matter for the Tribunal and not for this Court. As pointed out by the first respondent, the Tribunal did not completely reject their evidence, it simply did not give it any weight in the overall mix of the evidence before it. The Court is not satisfied that there was any misunderstanding by the Tribunal of the significance and importance of their evidence. Ground three reveals no error. The appellant submits that on a proper understanding of the evidence, there is a real possibility that the criminal syndicate wanted to hurt him, such that the Tribunal’s finding that the evidence “*adds little weight*” indicates that the Tribunal misunderstood the significance and importance of that evidence. He submits that the Tribunal committed a jurisdictional error in misunderstanding the significance of the evidence of the two witnesses, which was not rejected. He submits that the primary judge erred in failing to find such an error.

1. The Minister submits, and I accept, that the Tribunal’s finding at [86], when read in the context of the summary and characterisation of that evidence at [57] and [60]-[61], meant that it was open to the Tribunal to afford little weight to that evidence, and that the primary judge was correct to find that the weight to be given to that evidence was properly a matter for the Tribunal. I am unable to accept that there was any failure on the part of the Tribunal to appreciate the potential significance of the evidence, but for its manifest deficiencies. The Tribunal did not err, let alone in a way which created jurisdictional error. It follows that his Honour did not err. This ground of appeal must therefore fail.

## Conclusion

1. As all three grounds of appeal must fail, the appeal must be dismissed with costs.

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| I certify that the preceding twenty-three (23) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Bromwich. |

Associate:

Dated: 4 February 2022