FEDERAL MAGISTRATES COURT OF AUSTRALIA

SZHYW v MINISTER FOR IMMIGRATION & ANOR [2007] FMCA 2113

MIGRATION – Review of decision of the Refugee Review Tribunal – significant and extensive errors in Tribunal decision record – not typographical errors – meaning difficult to discern – failure to fulfil statutory obligation – failure to properly consider applicant's claim – jurisdictional error – application allowed.

Migration Act 1958, ss.36, 65, 414, 424A, 430.

Minister for Immigration and Ethnic Affairs v Wu Shan Liang and Ors (1996) 185 CLR 259
NAIS & Ors v Minister for Immigration and Multicultural and Indigenous Affairs & Anor (2005) 228 CLR 470; [2005] HCA 77
SZCBT v Minister for Immigration and Multicultural Affairs [2007] FCA 9

Applicant:	SZHYW
First Respondent:	MINISTER FOR IMMIGRATION & MULTICULTURAL AFFAIRS
Second Respondent:	REFUGEE REVIEW TRIBUNAL
File Number:	SYG 3607 of 2006
Judgment of:	Nicholls FM
Hearing date:	18 September 2007
Date of Last Submission:	18 September 2007
Delivered at:	Sydney
Delivered on:	20 December 2007

REPRESENTATION

Counsel for the Applicant:	Mr J R Young
Solicitors for the Applicant:	Nil
Counsel for the Respondents:	Ms S McNaughton
Solicitors for the Respondents:	Australian Government Solicitor

ORDERS

(1) A writ of certiorari issue, quashing the decision of the second respondent.

(2) A writ of mandamus issue, requiring the second respondent to redetermine the matter according to law.

(3) The first respondent pay the applicant's costs set in the amount of $5,000.

FEDERAL MAGISTRATES COURT OF AUSTRALIA AT SYDNEY

SYG 3607 of 2006

SZHYW
Applicant

And

MINISTER FOR IMMIGRATION & MULTICULTURAL AFFAIRS
First Respondent

REFUGEE REVIEW TRIBUNAL
Second Respondent

REASONS FOR JUDGMENT

1. This is an application made under the Migration Act 1958 (Cth) ("the Act") on 5 December 2006, and amended on 13 March 2007, which seeks review of a decision of the Refugee Review Tribunal ("the Tribunal"), signed on 27 October 2006 and handed down on 7 November 2006, which affirmed the decision of a delegate of the respondent Minister not to grant a protection visa to the applicant.

Background

2. The first respondent has filed a bundle of relevant documents in this matter (Court Book ("CB")) from which the following can be discerned.

3. The applicant is a national of Bangladesh, and of Hindu faith, who arrived in Australia on 3 October 2004 and applied for a protection visa on 30 October 2004. (See the application for protection visa reproduced at CB 3 to CB 30.)

4. The applicant's claims to protection were said to arise from his association with the Awami League in Bangladesh and with the "Bangladesh Hindu, Buddha, Christian Okya Parisad" (a multi-faith group). The applicant's claims to protection are set out in the statement annexed to his application for a protection visa, reproduced at CB 27 to CB 30.

5. The applicant appeared before the Tribunal on 27 September 2006 and gave evidence. By letter dated 29 September 2006, the Tribunal invited the applicant to comment on information that, subject to any comments that the applicant might make, would be the reason, or a part of the reason, for affirming the decision under review ("the s.424A letter") (reproduced at CB 210 to CB 216). The applicant responded to this letter through his then migration agents, Hamilton Purcell Consulting, by letter dated 19 October 2006 (reproduced at CB 220 to CB 232).

6. On 27 October 2006, the Tribunal affirmed the delegate's decision to refuse a protection visa to the applicant on the basis that it was not satisfied that there was a real chance that the applicant would be subjected to serious harm amounting to persecution for a Refugees Convention reason if he were to return to Bangladesh.

Application to the Court

7. The amended application filed on 13 March 2007 puts forward three grounds:

> *"1. The Refugee Review Tribunal made jurisdictional error in that its findings and reasons were so incomprehensible as to amount to a failure to exercise jurisdiction in relation to the claims (and the integers thereof) raised by the applicant.*
>
> *2. The Tribunal made jurisdictional error in that it did not comply with the requirements of Part 7 and in particular Section 414 of the Migration Act by reviewing the decision.*
>
> *3. The Tribunal made jurisdictional error in that it did not provide, pursuant to Section 424A of the Migration Act 1955 (sic: 1958) information that he had lied to the Australian Government when applying for a student visa which information was part of the reason for the Tribunal deciding that the applicant was not entitled to a protection visa."*

Hearing Before the Court

8. At the hearing before the Court, Mr P R Young of Counsel appeared for the applicant, and Ms S McNaughton of Counsel appeared for the first respondent. I also have before me Mr Young's written submissions filed 13 September 2007 and Ms McNaughton's written submissions, also filed 13 September 2007.

9. Mr Young advised that the applicant did not press ground 3 of the amended application.

10. The applicant's remaining two grounds in the amended application merge into a single complaint. That is, the Tribunal (amongst other things pursuant to s.414 of the Act) is required to give proper consideration to the applicant's claims such that it can be said that the Tribunal has properly conducted the review which it is jurisdictionally obliged to do. With reference to the Tribunal's decision record provided pursuant to s.430 of the Act, the Tribunal has not complied with this obligation in that in lengthy and critical parts of its decision record, its decision "becomes incomprehensible like a person descending into delusion or a drunk losing any coherence" (paragraph 5 of the applicant's written submissions).

11. The applicant's position is that the difficulties with the Tribunal's decision is not just a matter of presentation (for example, a lack of "paragraphing and sentence structure"), but that the reasons given are meaningless.

12. Mr Young noted that at CB 270.4 the Tribunal set out the applicant's claims in summary form as provided by his adviser by letter of 29 September 2003:

> " ● *known history of involvement with the Awami League in his local area*
>
> ● *known involvement in the Association of Bangladesh Hindu, Buddha Christian Union (Bangladesh Hindu Buddha Christian Oikhay Porishod)*
>
> ● *the current arrest warrant in his name on a false arms case, which will bring about his arrest on return and holds the*

prospect of a long detention awaiting a trial as reported by US Department of State

- *his membership of the Hindu minority and religion*
- *his known mixed marriage to a Muslim woman."*

13. Mr Young's submission was that what follows (particularly starting from about CB 272) is so meaningless and impenetrable that the Tribunal cannot be said to have given proper, genuine and realistic consideration in its decision to the application. He relied on the requirement set out in s.414 and what was said in *NAIS & Ors v Minister for Immigration and Multicultural and Indigenous Affairs & Anor* (2005) 228 CLR 470; [2005] HCA 77 ("NAIS").

14. Mr Young referred to the Tribunal's decision and raised the following issues in particular as examples of the complaints in support of the application before the Court.

15. First, at CB 272.9:

> *"In short, and given all the above and his extremely limited knowledge of the Awami League policies and organisation, the Tribunal is not satisfied that there is a real chance that he would be subjected to serious harm amounting to persecution for a Convention reason because of his limited political opinion, activities, and profile."*

16. The issue here is what is meant by, "limited political opinion."

17. Second, at CB 271.5:

> *"Rather, the Tribunal is satisfied that the Applicant has embellished his claims in order to enhance his claims for a protection visa by claiming that from time to time he was forced into hiding in order to enhance his claims for a protection visa. It is also relevant to add that the Tribunal accepts that the Applicant himself has admitted that he lied to the Australian Government when he applied for a student visa. In short, and given all the above, the Tribunal finds the Applicant is not a credible witness."*

18. The issue here is that the words: "in order to enhance his claims for a protection visa" plainly do not appear to make sense given what immediately precedes it. Further, that up to that point (that is, where this extract quoted appears in the Tribunal's analysis), what the

Tribunal had been considering were the issues concerning the applicant's nervousness, and whether the applicant fully understood matters put to him at the hearing. That given this, what appears to be the conclusion reached by the Tribunal does not follow. That this also should be seen particularly in light of what was said by Gleeson CJ in *NAIS* at [8]:

> *"Some of the findings of the tribunal adverse to the credit of the appellants were based, not on demeanour, but on their own admissions. That people who claim to fear for their lives admit to having told lies in an attempt to advance their claims for protection does not necessarily destroy their credibility. It might simply demonstrate their fear."*

19. Third, at CB 273.8:

> *". . . the Tribunal while accepting that Main Jammader is a local criminal has not been able to satisfy itself that the Applicant has a well-founded fear of serious harm amounting to persecution for from Main Jammader for a Convention reason related reason or that the essential and significant reason for the two attacks on him (one by Main Jamader) were Convention reason. Nor from the claims made by the Applicant and the information he has provided has the Tribunal been able to satisfy itself that in the circumstances he describes there has been an absence of effective state protection for a Convention related reason. Further, the Tribunal is satisfied that if the Applicant has any subjective fear of harm from Main Jammader for a non-Convention related reason who he claim to have known from his school days and only lived 1 km away from him in Khulna City, then it would be reasonable for him to live elsewhere in Bangladesh in safety and does not accept that he has a well-founded fear of serious harm amounting to persecution for a Convention reason on this basis."*

20. The background leading up to what the Tribunal seeks to address in this extract was that the applicant had claimed that he had been attacked on two occasions - once by a person called "Main Jamadder," a BNP terrorist, and on the second occasion, by others from the BNP and its allies. Mr Young submitted that the first sentence quoted above is "completely incomprehensible" because even if what the Tribunal appears to be saying is that Main Jamadder is a local criminal, the mere fact that he is a local criminal does not mean that the attack on the applicant could not have been for a Convention reason, or that the

essential and significant reason for the two attacks on him (one by Main Jamadder) were for a Convention reason.

21. Further, Mr Young submitted that while the Tribunal had earlier (at CB 269.9) understood that the applicant "was attacked on two occasions" (see also CB 273.1) that the Tribunal's analysis focused on one attack by Main Jamadder. No consideration had been given to the second attack, until what appears to be a "throw in" reference to the "two attacks."

22. Further, that the incomprehensible nature of the Tribunal's stated reasons is also evident from the next sentence. The Tribunal appears to have thrown in concepts of state protection and relocation without any logical progression. This can also be seen, in Mr Young's submission, that given that the Tribunal was talking about harm from Main Jamadder, who is a non-state persecutor, the issue is not whether there is absence of state protection for a Convention related reason but whether there is persecution. That is, the issue is whether the State is willing, or able, to provide state protection in that context.

23. Further, using the reference to "relocation" that follows the words "that if" in the extract, it is difficult to understand what the Tribunal was seeking to achieve, or address, in that if it was attempting to deal with a relocation issue, there is no consideration about reasonableness or the practicality of relocation and all the elements required in such an analysis.

24. The overriding issue here, as emphasised by Mr Young, was that the Tribunal introduced concepts in a way that did not make sense given the context within which the Tribunal was seeking to raise them.

25. Mr Young also pointed to those parts of the decision record at CB 274.1 where the Tribunal attempts to deal with the applicant's claim that a false case had been made against him (described as a false arms charge). He referred to the Tribunal's reference to a Parliamentary report in January 2001 (CB 274 .6) which stated that 99% of the 69,010 people arrested by the governments of the day since 1974 on false charges had been released. Mr Young's submission was that the applicant's claim was not about any release, but that he had feared harm while he was in detention. The Tribunal appears to have

attempted to deal with this particular aspect of the applicant's claims simply by accepting independent country information that people were released.

26. In these circumstances, he submitted, there did not appear to be any basis for the Tribunal then reaching the conclusion at CB 274.8:

> *"Nor does it accept he will be arrested, jailed, tortured or killed for this or any other reason if he return (sic) to Bangladesh."*

27. Further, that despite setting out as one of the applicant's claims (at CB 270.5) that the applicant had put forward the ground that he had feared persecution because of his known "mixed marriage to a Muslim woman," in the part of its decision record where the Tribunal appears to commence consideration of the "religious issues" (CB 275.3), it focused on the fear of harm because of his Hindu religion. Although there is a reference to marriage to a Muslim girl who "converted to become a Hindu," and despite its stated acceptance (at CB 275.9) that "his wife has converted to this religion," the Tribunal does not appear to have given any consideration beyond a mere reference to the fact of her conversion as to how this conversion, and his marriage to this woman affected, and was relevant to, the issue of whether Australia owed the applicant protection.

28. The above points in Mr Young's submission are illustrative only of the Tribunal's claimed failure to conduct a proper consideration of the applicant's claims. The submission was that its consideration, from about CB 270.5, but in particular from CB 274 to CB 276, is deficient in the way as illustrated above.

29. In all, therefore, the applicant's complaint is that Tribunal is required to provide proper consideration of his claims in conducting the review pursuant to s.414, in satisfying itself as to whether or not he meets the requirements set out in s.36 (obviously with reference also to s.65) on the central and critical question as to whether Australia owes protection obligations to the applicant under the Convention. On the issue of whether the Tribunal could be satisfied, one way or the other, its decision record does not reach "the minimum standards" required of the decision maker.

30. While Mr Young conceded that there are pressures (time pressures and workload pressures) in Tribunals having to deliver decisions, that at best this Tribunal can only be said to have acted superficially, with perhaps passing references in some parts to claims, and in other parts not to have made relevant findings. Further, that other findings were infected by "meaningless concepts" (such as the absence of effective state protection as outlined above). That with even a beneficial eye put to the Tribunal's decision it cannot be said that it has properly considered and dealt with the applicant's claims.

31. Ms McNaughton submitted that Mr Young had exaggerated: "the faults within this decision." While she conceded that: "it is not the best expressed or the most felicitously expressed decision," that it nonetheless did adequately set out the reasons as to why it came to its decision. Ms McNaughton agreed that if a Tribunal failed to set out its purported reasons, and that what it did was meaningless, then plainly such an action would constitute jurisdictional error. But Ms McNaughton's submission was that this Tribunal had not done so. She comprehensively took the Court through the Tribunal's decision record. She rejected Mr Young's submission that concepts and findings "just popped out," and that if this decision is read, albeit with a "bit more effort than some," its reasons are nonetheless in existence and discernible.

32. In my view, it does not serve any useful purpose to set out at length in this Judgment the submissions made by Ms McNaughton, save as to note the following.

33. Ms McNaughton emphasised, as conceded by the applicant, that the Tribunal had properly set out its understanding of the applicant's claims (see CB 269.4). These are repeated at CB 270.4, and the Tribunal immediately follows with (at CB 270.5):

> *"However, and notwithstanding his claims, the Tribunal has many concerns about his claims and credibility, and it put these to the Applicant in its letter dated 29 September 2006."*

Noting, of course, that this was all under the heading of "Findings and Reasons."

34. She submitted that the Tribunal then went on to make findings in relation to each of the claims. But it must be understood that each of the subsequent findings were in the context of the Tribunal's concerns about the applicant's credibility, that there was no error in relation to this credibility finding, and that the Tribunal referred to a number of factors which were open to it. This culminates in its finding (at CB 271.5): "[i]n short, and given, all the above, the Tribunal finds that the Applicant is not a credible witness."

35. Although, as she described it, "ideally," the Tribunal should have gone onto another paragraph, what immediately follows at CB 271.5 is that the Tribunal deals with the applicant's claim that he had engaged in door-to-door canvassing for the Awami League prior to the 2001 election campaign (this was part of his history of involvement with the Awami League in his local area). Ultimately (at CB 272.1) the Tribunal found that the applicant's claims, in light of his own evidence and the adviser's submissions, and the applicant's answers at the second hearing before the Tribunal: "were purely designed on his part to create the impression that he in fact played a significant role in Bangladeshi politics." The Tribunal (at CB 272.4) rejected the claim of door-to-door canvassing.

36. The Tribunal then proceeded to consider the applicant's involvement generally with the Awami League. That (about CB 272.5) it said that it "was having difficulty accepting that he could be reasonably regarded as a leader in the Awami League even at the local level." Leading ultimately to (at CB 272.8): ". . . and not withstanding claims made by the applicant, the Tribunal does not accept that the Applicant was involved in any significant way in the Awami League even though he held several very junior positions in it which is attested to by several documents he has provided and is satisfied that he could not be reasonably regarded as a leader in the Awami League, even at the local level."

37. Ultimately the Tribunal (at CB 272 .9) found that it was not satisfied that there was a real chance that the applicant would be subjected to serious harm amounting to persecution for a Convention reason because of his political activities.

38. The Tribunal dealt with the applicant's claims that he had been attacked on two occasions, the first by Main Jamadder, a BNP terrorist, and on the second by other people from the BNP and its ally (at CB 273). (I should just note that Ms McNaughton, in passing, noted that the Tribunal's reporting of its question to the applicant as to why he was not "killed" with the benefit of hindsight was: "not a fabulous question to put to an applicant.") That, notwithstanding the "denseness of the page," the Tribunal did set out, and did deal with, the two attacks. It rejected any Convention related nexus in relation to both of them. While the Tribunal also went on to make comments which were not essential to its decision, that is, the reference to effective state protection and relocation (which was probably not a finding in any event) does not alter the statement that the Tribunal found no Convention nexus in relation to the attacks.

39. Ms McNaughton has also submitted that (at CB 274) in what is "possibly a new paragraph," the Tribunal addresses a new topic relating to the: "false arms charge." The Tribunal accepted country information in relation to this issue over the applicant's claims. Noting that it did so in a context of having found adversely in relation to the applicant's credibility. Further, the Tribunal gave reasons (she emphasised "proper reasons"), being his failure to raise this claim earlier, and his claim that he had left Bangladesh without difficulty.

40. The Tribunal proceeded at CB 275.3 to CB 275.4 (in what is clearly a new paragraph), to deal with the Convention ground of religion, and the various manifestations of the applicant's claims that could be said to fall within this ambit. The Tribunal noted (at CB 275.3 to CB 275.4) the applicant's claims of his involvement with Hindu Christian groups and that he had been oppressed by fanatical Muslims because of his marriage to a Muslim girl who had converted to Hinduism. What follows, in Ms McNaughton's submission, contains: "real logical reasons" as to why the claims are not sufficient to amount to serious harm. This is further reinforced (at CB 276.2) where the Tribunal found that if the problems were as bad as claimed, his family would have gone into hiding or moved, but had not done so until after the applicant had arrived in Australia.

41. In all, therefore, the Minister's position (as submitted by Ms McNaughton) is that while this decision requires: "a bit more effort than some," "the reasons are clear and discernible."

Consideration

42. I am well seized of what the High Court said in *Minister for Immigration and Ethnic Affairs v Wu Shan Liang and Ors* (1996) 185 CLR 259, in particular, at 271-227:

> *"When the Full Court referred to 'beneficial construction' it sought to adopt an approach mandated by a long series of cases, the best exemplar of which is* Collector of Customs v Pozzolanic *((1993) 43 FCR 280). In that case a Full Court of the Federal Court (Neaves, French and Cooper JJ) collected authorities for various propositions as to the practical restraints on judicial review. It was said that a court should not be 'concerned with looseness in the language . . . nor with unhappy phrasing' of the reasons of an administrative decision-maker (*Collector of Customs v Pozzolanic *(1993) 43 FCR 280 at 287). The Court continued (*Collector of Customs v Pozzolanic *(1993) 43 FCR 280 at 287): 'the reasons for the decision under review are not to be construed minutely and finally with an eye keenly attuned to the perception of error.' These propositions are well settled."*

43. I also note what was further explained by Stone J in *SZCBT v Minister for Immigration and Multicultural Affairs* [2007] ("*SZCBT*") FCA 9 at [26]:

> *"The Minister urged a 'beneficial' construction of the Tribunal's reasons and referred to comments made in* Minister of Immigration and Ethnic Affairs v Wu Shan Liang *(1996) 185 CLR 259, in particular at 271 – 272. The phrase 'beneficial construction' as used in* Wu Shan Liang *has a specific meaning, and was certainly not intended to mean that any ambiguity in the Tribunal's reasons be resolved in the Tribunal's favour. Rather, the construction of the Tribunal's reasons should be beneficial in the sense that the Tribunal's reasons would not be over-zealously scrutinised, with an eye attuned to error. In this sense a 'beneficial' approach to the Tribunal's reasons does not require this Court to assume that a vital issue was addressed when there is no evidence of this and, indeed, the general thrust of the Tribunal's comments suggest that the issue was overlooked."*

44. Ms McNaughton did not quite press that the Court should adopt a beneficial reading, or construction, of the Tribunal's decision record. While acknowledging some issues of expression ("not the most felicitously expressed") ("inelegant expression") that nonetheless the Tribunal's reasons were plain (and presumably could be discerned on a plain reading of its decision record). Further, that the Tribunal dealt with each of the applicant's claims such that its decision, and its reasons contained within it, are discernible.

45. It must be said that Counsel for the first respondent made a comprehensive and a valiant effort to persuade the Court that the Tribunal gave proper consideration to the applicant's claims. Ultimately, I do not agree with those submissions. I am persuaded by Mr Young's submissions that the Tribunal's stated reasons for its decision are, to a large part, "impenetrable."

46. I should just note that I do not endorse this characterisation of the Tribunal's decision record as expressed in the applicant's written submission ("incomprehensible like a person descending into delusion or a drunk losing any coherence"). Such descriptions in my view, as appealing as colourful language may be in some circumstances, have no place in proper and sober consideration of the issues before the Court. Nor, given the connotations inherent in such colourful language, is it fair to describe this Tribunal's decision in such terms before the Court.

47. Having said that, however, there is clearly an obligation on the Tribunal to give proper consideration to an applicant's claims. The only evidence before the Court now of this consideration, is what the Tribunal has chosen to present in its own decision record. The decision record is the reflection of the Tribunal's thinking, reasoning and analysis of the applicant's claims. It is a reflection of its mental processes as to how it reached its ultimately stated conclusion that the applicant is not a person to whom Australia owes protection obligations. On any plain reading of the Tribunal's decision record, I cannot be satisfied that the Tribunal has properly considered these claims. Nor can I be so satisfied on a beneficial reading or construction of its decision record as explained by Stone J in *SZCBT*.

48. I put to one side the lack of paragraphing which would have been of assistance in certainly, at least, a beneficial reading of the Tribunal's decision record. I put to one side the typographical errors (for example, at CB 273.8 "persecution for from Main Jammader") which add to the difficulty in reading. In part, I also put aside what can only be described as the stream of consciousness style (more appropriate to a certain literary genre, but certainly not to an administrative decision). What is left is still a jumble of ideas and concepts which cannot be explained (or indeed excused) simply on the basis that the Tribunal, once having identified the applicant's claims, only failed to deal with these claims without any structure in its approach. That much is clear.

49. I agree with Mr Young that his examples of the deficiency in the Tribunal's decision record relate to matters of substance rather than structure or style.

50. The Tribunal's purported consideration of the issue of the applicant having been attacked on two occasions is a good example. I agree with Mr Young that while the Tribunal sought to address one attack (that is, the attack by Main Jamadder), its apparent dealing with the second claimed attack and the Tribunal's finding that the second attack was not for any Convention related reason, appears to spring (in Mr Young's words "pop-up") simply from the Tribunal's similar finding in relation to the attack from Main Jamadder. That the applicant may have claimed that "in both cases he was beaten until he was unconscious, and then on each occasion he awoke in a clinic" (CB 273.3) does not, in my view, entitle the Tribunal to simply make a similar finding in relation to the second attack as in relation to the first, given that the very clear evidence which the Tribunal itself set out in its decision record earlier under the heading of "Claims and Evidence" was that the applicant had been attacked on 14 August 2002 by a group of BNP hoodlums led by Main Jamadder (CB 240.5) and that the claim relating to the second attack, which was said to have taken place on 25 April 2004, was that he had "been attacked by a group of BNP and Jamaat-e-Islami 'cadres'" (CB 240.8). The two attacks, while having similarities in the consequences for the applicant being beaten and waking up in a clinic, and even if taking into account that both spring out of his opposition to the BNP, were quite clearly put forward as two separate incidents with

two separate groups of protagonists, and indeed were said to have occurred some twenty months apart in different circumstances.

51. Similarly, that part of the Tribunal's decision record at CB 273.7 to CB 273.8 represents, as Mr Young in my view correctly submits, a level of denseness of thinking that makes real meaning difficult to discern. The jumble of concepts, as Mr Young submits, including "relocation," "state protection," "well founded fear," "serious harm," "persecution and Convention reasons," leads me to the inference that the Tribunal felt that it could fire relevant phrases and Convention related concepts into its stream of consciousness, in the hope that at least one, if not all, may strike home and be seen to be reasons for rejecting the applicant's claims.

52. Similarly, the Tribunal plainly recognized that one of the applicant's claims, that is, one of five, was "his known mixed marriage to a Muslim woman" (CB 269.6 and CB 270.6). It also recognized that the applicant claimed to have been oppressed "by fanatical Muslims because of his marriage to a Muslim girl who converted to become a Hindu" (CB 275.4). Even further, it accepted that amongst other things "his wife has converted to this (Hindu) religion" (CB 275.9). I cannot see that in its decision record (while addressing other aspects of the applicant's claims based on the Convention ground of religion) that it properly considered or, beyond mere mention, addressed, the issue of the conversion of his previously Muslim wife to Hinduism and the relationship to, or consequence of, this in the context of his claimed fear as it was said to arise from Muslim fanatics or those opposed to his marriage. At best, the Tribunal's approach in dealing with this issue (and it must be remembered this was a separately identified integer of the applicant's claims) was no more than a general reference to it in amongst many other claims under the heading of religion.

53. I also agree with Mr Young that in other parts of the Tribunal's decision record (and this is separate to its use of generally readily understood concepts but which do not appear to have applicability in the context of what is being considered - for example, state protection and relocation as at CB 273) its use of other phrases which both on their own and, it must be said, in context, are not easily susceptible to understanding.

54. For example, the Tribunal's use of the phrase: "limited political opinion" (CB 272.10 and CB 274.8). It was submitted for the Minister that the Tribunal's reference (at CB 273.7) to: "very limited political involvement and profile" is the explanation as to what the Tribunal meant elsewhere by "limited political opinion," as used elsewhere in its decision record.

55. Yet another example is found at CB 271, where the Tribunal states, in a sequence which appears focused on the applicant's credibility:

> *"Rather, the Tribunal is satisfied that the Applicant has embellished his claims in order to enhance his claims for a protection visa by claiming that from time to time he was forced into hiding in order to enhance his claims for a protection visa."*

56. As it stands this is clearly a nonsense. It reads that the applicant was forced into hiding in Bangladesh in order to enhance his claims for a protection visa in Australia. Ms McNaughton submitted that this was simply an example of a typographical error containing the same clause at the beginning and end of the sentence. That it "clearly should have been proof read more carefully."

57. I might have been more amenable to Ms McNaughton's submissions in general had this been an isolated incident of a failure of proof reading. All administrative decisions (indeed Court Judgments as well) are susceptible from time to time to typographical errors, and proof reading oversights. But the issue is that this is not an isolated example. There are many parts of the Tribunal's decision record that reveal such deficiency. One or two typographical errors, or oversights, plainly should not attract any adverse comment whatsoever. But the frequency of such deficiencies in this decision record lend strong support to Mr Young's submissions when seen in the light of the other deficiencies on which he relies. In that cumulative sense these support the submission that the decision record is not discernible of such meaning such that it could be said that the Tribunal gave proper consideration to the applicant's claims.

58. In context, however, this is not apparent on a plain reading of the Tribunal's decision record. But even on a "beneficial" approach, it is difficult to assume that this is what the Tribunal meant given that the Tribunal did not just use this phrase on one occasion (in which case it

could be said that this may have been some infelicitous expression or even typographical error), but used it on at least two separate occasions. I would have thought that if the Tribunal sought (at CB 273.7) to correct or explain what it said at CB 272.10, then its use of the same phrase at CB 274.8 subsequently casts doubt on what exactly the Tribunal was seeking to do, such that its reasons for the decision are, as Mr Young submits, in that sense also, at least "impenetrable."

59. I should just note that during submissions, and in particular on the issue of seeking to discern meaning in what the Tribunal set out at CB 273 (in relation to the two attacks) in explaining why the sentence at CB 273.7, and in particular that part of the sentence beginning: ". . . the Tribunal while accepting that Main Jammader is a local criminal . . ." it was noted that ideally, in a perfect world, a busy Tribunal member should have taken more care. That is, that typographical errors can intrude given the busy workload of a Tribunal member. I should just emphasise that I have no evidence whatsoever before me as to just how busy, or otherwise, this particular Tribunal member was at the time of the drafting of this decision record. I also emphasise that in agreeing with Mr Young's submissions, such agreement is not based on mere typographical errors or omissions of particular words.

60. Ultimately, in my view, no matter how busy a particular Tribunal member may, or may not, be this issue is irrelevant. The Tribunal, once constituted, has an obligation to properly fulfil its statutory obligation to conduct the review.

61. This Tribunal decision, for the reasons set out above, does not demonstrate a proper consideration of the applicant's claims. This constitutes jurisdictional error. Given that I can see no other reason to deny the relief sought by the applicant, I will make the orders he seeks.

I certify that the preceding sixty-one (61) paragraphs are a true copy of the reasons for judgment of Nicholls FM

Associate: C Darcy

Date: 20 December 2007