FEDERAL COURT OF AUSTRALIA

SZQEN v Minister for Immigration and Citizenship [2012] FCA 387

Citation:	SZQEN v Minister for Immigration and Citizenship [2012] FCA 387
Appeal from:	SZQEN v Minister for Immigration [2011] FMCA 648
Parties:	**SZQEN v MINISTER FOR IMMIGRATION AND CITIZENSHIP and JOHN BLOUNT IN HIS CAPACITY AS INDEPENDENT MERITS REVIEWER**
File number(s):	NSD 1547 of 2011
Judge:	**YATES J**
Date of judgment:	18 April 2012
Catchwords:	**MIGRATION** – refugee – offshore entry person – independent merits review – consideration of the "relocation principle" – meaning to be given to "home region"
Legislation:	*Migration Act 1958* (Cth)
Cases cited:	*Canaj v Secretary of State for the Home Department* [2001] INLR 342 *Fadil Dyli v Secretary of State for the Home Department* [2000] Imm AR 652 *Gardi v Secretary of State for the Home Department* [2002] 1 WLR 2755 *Januzi v Secretary of State for Home Department* [2006] 2 AC 426 *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 *SZATV v Minister for Immigration and Citizenship* (2007) 233 CLR 18 *SZMCD v Minister for Immigration and Citizenship* (2009) 174 FCR 415
Date of hearing:	10 November 2011
Place:	Sydney
Division:	GENERAL DIVISION

Category:	Catchwords
Number of paragraphs:	45
Counsel for the Appellant:	Mr J F Gormly
Solicitor for the Appellant:	Schofield King Lawyers
Counsel for the First Respondent:	Mr T Reilly
Solicitor for the First Respondent:	Australian Government Solicitor

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
GENERAL DIVISION **NSD 1547 of 2011**

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

BETWEEN:	**SZQEN** **Appellant**
AND:	**MINISTER FOR IMMIGRATION AND CITIZENSHIP** **First Respondent**
	JOHN BLOUNT IN HIS CAPACITY AS INDEPENDENT MERITS REVIEWER **Second Respondent**

JUDGE: **YATES J**
DATE OF ORDER: **18 APRIL 2012**
WHERE MADE: **SYDNEY**

THE COURT ORDERS THAT:

1. The appeal be dismissed.

2. The appellant is to pay the first respondent's costs.

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

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
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ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

BETWEEN:	**SZQEN** **Appellant**
AND:	**MINISTER FOR IMMIGRATION AND CITIZENSHIP** **First Respondent**
	JOHN BLOUNT IN HIS CAPACITY AS INDEPENDENT MERITS REVIEWER **Second Respondent**

JUDGE:	**YATES J**
DATE:	**18 APRIL 2012**
PLACE:	**SYDNEY**

REASONS FOR JUDGMENT

1 This is an appeal from a judgment of the Federal Magistrates Court of Australia (the Federal Magistrates Court) in which the appellant unsuccessfully sought review of the second respondent's recommendation that the appellant not be recognised as a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees, as amended by the 1967 Protocol relating to the Status of Refugees.

Background

2 The appellant is a citizen of Afghanistan who left his homeland in 1998 together with his wife and children. He lived in Quetta in Pakistan from that time (apart from a brief time in Iran for two or three months in 2001) until he arrived in Australia (via Malaysia and Indonesia) at Christmas Island on 16 February 2010 as an unauthorised boat arrival.

3 The appellant is an ethnic Hazara and a Shia Muslim. He claims to fear persecution, generally, by the Taliban due to his ethnicity and religion. He also claims to fear persecution from a Pashtun landowner who assumed control over certain land owned by the appellant in

Helmand province. In effect, these claims formed the bases on which the appellant sought to demonstrate that he was a person to whom Australia has protection obligations.

4 The appellant was born in 1957 in Kariz in the Mahajareen area of Jaghori district in Ghazni province. He lived and worked in Jaghori as a farmer until 1996. His father owned land in Jaghori as well as other land in Nar-e-Saraj near Lashkar Gah in Helmand province (the Helmand land). The land in Jaghori and the Helmand land was divided between the appellant and his brothers upon their father's death about 18 or 19 years ago.

5 In 1996 the appellant's older (step) brother, who was then looking after the Helmand land, went missing when taking wheat from Lashkar Gah to Kabul via Ghazni City. The appellant believes that his brother was killed by the Taliban who knew him from Lashkar Gah. After his brother's disappearance the appellant took over responsibility for the Helmand land (or at least some part of it) until it (or some part of it) was "taken over" in 1998 by a Pashtun who owned adjoining land. During this incident the appellant says he was beaten by a worker or workers acting on behalf of the Pashtun landowner. The appellant subsequently fled to Pakistan after apparently being told that the Pashtun landowner would pursue and kill him. In an interview on 23 January 2011 the appellant claimed that the Pashtun landowner was a member of the Taliban. At this interview, but not at earlier interviews, the appellant sought to link the landowner with the disappearance of his brother in 1996.

6 In 2007 the appellant returned to Lashkar Gah to attempt to reclaim the Helmand land. He met considerable bureaucratic opposition. He claims that, in the course of seeking to reclaim the land, he was threatened. After this, he returned to Pakistan where he stayed until leaving for Australia in February 2010.

7 A Refugee Status Assessment (RSA) was undertaken at the appellant's request. It was determined that the appellant was not a refugee as defined in the 1951 Convention as amended by the 1967 Protocol. He sought an independent merits review of the RSA.

The recommendation of the Independent Merits Reviewer

8 The Independent Merits Reviewer (IMR) delivered his report on 17 February 2011, finding that the appellant did not meet the criterion for a protection visa under s 36(2) of the

Migration Act 1958 (Cth) (the Act). The IMR recommended that the appellant not be recognised as a person to whom Australia has protection obligations.

9 The IMR considered, firstly, the appellant's claim that he feared persecution in Afghanistan as an Hazara and a Shia "because Hazaras and Shias are generally persecuted by the Taliban".

10 The IMR rejected this claim, finding that the matter before him was not one where recourse should be had to a "group determination" where each member of the group is regarded, prima facie, as a refugee. However, the IMR accepted that it did not follow that an Hazara Shia could not be found to be a refugee on the basis of that person's own individual circumstances and experiences to which that person's ethnicity and religion may be relevant factors. The IMR therefore turned to the specific circumstances relied upon by the appellant for his claims.

11 In this connection the IMR made the following findings:

(a) Helmand is an "overwhelmingly-Pashtun province" and a Taliban stronghold where security is poor.

(b) A local Pashtun landowner effectively took over the appellant's land in 1998 and an employee of the landowner threatened and assaulted him. These events were not necessarily motivated by the appellant's Hazara ethnicity. It could have been a "simple land grab", given that the appellant's neighbouring landholder, an Uzbek, was involved in a similar event and was also in fear of the Pashtun landowner. The IMR nevertheless accepted that, in the appellant's case, his non-Pashtun ethnicity was a significant factor in the belligerent attitude of the Pashtun landowner.

(c) The appellant's attempt to link his brother's disappearance with the Pashtun landowner was a fabrication by him in order to strengthen his claims.

(d) Obstacles were placed in the appellant's path when he attempted to regain the Helmand land. He was told in blunt terms that, as an Hazara, he was not entitled to the land. This led to a heated confrontation with the official involved, in which a veiled threat to the appellant may have been made.

(e) The local authorities in Helmand province have denied the appellant's title to the land. As a consequence, if the appellant were to return to Helmand to pursue the matter further, he might face a real chance of harm. In this connection the appellant's ethnicity was "a significant and essential element of the motivation for these difficulties".

(f) The Pashtun landowner's suggested past or present ties with the Taliban do not make any fundamental difference to the appellant's situation, save to heighten the chance that he would face harm should he return to Helmand province to pursue his claims.

12 The IMR concluded (at [92] and [93]) as follows:

> These considerations are specific to the situation in Helmand province where the land in question is situated, where the Pashtun landowner in question is located, and where the extent of Pashtun dominance and of violence and security gives rise to heightened dangers. The reviewer is satisfied that they do not apply to the claimant's situation in Afghanistan generally, including in his own home district of Jaghori.
>
> The reviewer does not accept that, the claimant's title to his land having been decisively rejected by officials in Helmand, the Pashtun landowner in Helmand is now motivated or able to locate, pursue and target the claimant elsewhere in Afghanistan.

13 The IMR then turned to consider the appellant's ability to return to Afghanistan more generally. In this connection the IMR found that the appellant could simply return to his own district of Jaghori where he had lived for most of his life. The appellant's own district of Jaghori was overwhelmingly populated by Hazaras, with Pashtuns only at the borders of the district that were, in any event, "controlled by Hazara parties".

14 The IMR concluded (at [97]) by stating that he was:

> ... not satisfied that there is a real chance that in the particular circumstances the [appellant] would be targeted in relation to the dispute in Helmand should he return to his home village or local area in the Hazara-controlled Jaghori district.

15 The IMR's reasons record that, in his interview with the appellant on 23 January 2011, he specifically raised the possibility of the appellant returning to his "own district in Jaghori". After putting to the appellant that it appeared (for reasons given by the IMR) that the Pashtun landowner was simply after the appellant's land, and after recording the appellant's response that the Pashtun landowner had a car sales shop in Lashkar Gah in which he worked during the day selling opium, while working at night as a Taliban

commander (an assertion which the IMR found to be "highly unlikely"), the IMR recorded (at [44]):

> The reviewer asked the [appellant] how this would pose a problem for him elsewhere, for example in Jaghori. The [appellant] replied that of course it would be dangerous for him even in Jaghori, wherever he goes the man will find and kill him. The Pashtun does not have documents of ownership for the land in his own name and that is why he wants to kill the [appellant]. They can then tear up all the documents and can own the land. The reviewer asked why, if his claim to the land had already been rejected, the Pashtun would need to kill him. The [appellant] replied that the Pashtun would feel comfortable and secure if he was killed. Also as a Taliban he believes he will earn merit by killing a Hazara Shia.

16 Later the IMR recorded (at [46]):

> The reviewer acknowledged that Lashkar Gah is the capital of Helmand province which is 92% Pashtun and is said to be a Taliban stronghold where fighting has continued. Nar-e-Saraj is nearby and adjoins the district of Lashkar Gah. However, with regard to the [appellant's] own district of Jaghori there is a good deal of evidence that the Taliban is not strong within the district but only on the borders. Material concerning the situation in Jaghori was put to the [appellant], including the fact that is it controlled by Hazara parties. Country information indicating that there is a frequently used safe route between Jaghori and Ghazni City was also put to the [appellant].

17 The appellant's response was that his situation in Jaghori would be "much worse than the situation in this detention camp where everything is provided for him" and that, "(i)n Jaghori he has nothing". The appellant also said that as soon as he travelled outside Jaghori he would be "in danger". In this connection the appellant said that it was not the insecurity of the roads, but the fact that the Pashtun landowner would kill him should he go outside Jaghori. The appellant said that he was sure that the Pashtun landowner would identify, target and kill him "anywhere" that he (the appellant) goes in Afghanistan.

18 Having considered the appellant's ability to return to Helmand or Jaghori the IMR then went on to consider, separately, the question of relocation. The IMR considered this question specifically with respect to Kabul as "a large urban centre". He posed the question of relocation in the following terms:

> The remaining issue is whether relocation would be reasonable: would the conditions in a proposed area of relocation be so unacceptable that the claimant would be constrained to return to the area where he faces a chance of persecution (i.e. Helmand)?

19 After noting the large Hazara community in Kabul, the appellant's experience living and working in a busy urban environment, and various other observations drawn from a number of sources, the IMR determined that the totality of the circumstances were not such that the appellant would be unable to live in Kabul and might therefore be constrained to return to Helmand. Thus the IMR found that relocation within Afghanistan to Kabul was both a relevant and reasonable option for the claimant.

20 The IMR raised the question of relocation to Kabul in the course of the appellant's interview on 23 January 2011. The appellant's response was that he was not in a position to reject the information that had been put to him in that regard. He said, however, that he knew "his own situation and fears for his life". He said that if he could live in Afghanistan he would do so; but he could not live in either Afghanistan or Pakistan.

21 The IMR's reasons record that he undertook to consider any further material or submissions that the appellant might wish to make. These submissions were to be provided by no later than 9 February 2011. At the time of the interview on 23 January 2011, the appellant's adviser indicated that he did not anticipate that any further submission would be forthcoming. The IMR's reasons record that, in fact, no further submissions or other material were provided by the appellant.

The decision of the Federal Magistrates Court

22 The appellant's further amended application in the Federal Magistrates Court listed four grounds on which he asserted the IMR's decision was affected by legal error. Two of those grounds (relating to the IMR's alleged failure to take into account the full extent of the appellant's family unit and to bring certain information to the appellant's attention) were dismissed and are not relevant to this appeal. The two grounds relevant to this appeal are that:

> 1. The [IMR] failed to ask the correct question in relation to relocation in recommending that the [appellant] was not a person to whom Australia owed protection.
>
> …
>
> 4. The [IMR] asked himself the wrong question to conclude that the [appellant] could return to Jaghori as if this was not a relocation from a place of a well founded fear of persecution.

23 After considering relevant authorities the presiding Federal Magistrate concluded that the first ground had been made out. In this connection his Honour noted that the test of relocation is one of reasonableness in the sense of practicality and that the IMR erred in asking the question whether the conditions in the proposed area of relocation were so unacceptable that the claimant would be constrained to return to an area from where he faced a chance of persecution. His Honour noted, however, that the IMR considered the appellant's relocation in Kabul only as an alternative to his return to Jaghori.

24 The presiding Federal Magistrate reasoned that, upon a close reading, the fourth ground relied upon by the appellant was effectively an impermissible challenge to the IMR's finding of fact that Jaghori was the appellant's home district. His Honour expressed the view, for the reasons he gave, that this finding was open to be made by the IMR in any event. This finding constituted an alternative and independent ground for affirming the IMR's decision: *SZMCD v Minister for Immigration and Citizenship* (2009) 174 FCR 415 at [122]. His Honour therefore dismissed the application.

The appeal

25 The appellant relies on three grounds of appeal in this Court (a further two were abandoned). The relevant grounds are as follows:

> The [Federal Magistrates Court] erred in failing to find that the recommendation of the [IMR] was affected by legal error by:
>
> 1. Wrongly construing the fourth ground of the Further Amended Application as one to be read as a question of fact;
>
> 2. Misconceiving and misapplying the concepts of "safe home district" and "return to safe home district";
>
> 3. Wrongly treating the question of return to Jaghori as foreclosing any requirement to consider whether the appellant was in any sense located in the place of persecution.

26 As the appeal came to be argued by counsel on behalf of the appellant, these three grounds represent different facets of the one argument, namely that the question of the appellant's return to Jaghori was really one of relocation, nor merely of return, and that the IMR failed to consider the reasonableness of that relocation.

27 A number of related submissions were also advanced orally, including that the appellant had not lived in Jaghori for 14 years, that he no longer had immediate family in Jaghori, and that when he went back to Afghanistan for a short time in 2007 he had gone to Helmand rather than Jaghori. The last matter clearly related to the appellant's attempt to reclaim the Helmand land from the Pashtun landowner. In context, these submissions must be taken as being directed to the question of the reasonableness of the appellant's "relocation" to Jaghori.

Consideration

28 The question of relocation arises when a claimant for refugee status, having a well-founded fear of persecution in his or her home region, can nevertheless avail himself or herself of real protection elsewhere within that person's country of nationality: *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 per Black CJ at 440-441; Whitlam J agreeing at 453. In those circumstances, subject to the reasonableness of relocation, the claimant is not a "refugee" for the purposes of Article 1A(2) of the 1951 Convention, as amended.

29 This notion, referred to variously as "the relocation principle", "the internal protection principle" and "the internal flight alternative", amongst other descriptions, was discussed in *SZATV v Minister for Immigration and Citizenship* (2007) 233 CLR 18. In that case the plurality (Gummow, Hayne and Crennan JJ, with whom, on this topic, Callinan J agreed) said (at [19]) that the matter of relocation finds its place in the Convention definition of "refugee" by the process of reasoning adopted by Lord Bingham of Cornhill in *Januzi v Secretary of State for Home Department* [2006] 2 AC 426.

30 In that case his Lordship (at [7]) said:

> The Refugee Convention does not expressly address the situation at issue in these appeals where, within the country of his nationality, a person has a well-founded fear of persecution at place A, where he lived, but not at place B, where (it is said) he could reasonably be expected to relocate. But the situation may fairly be said to be covered by the causative condition to which reference has been made: for if a person is outside the country of his nationality because he has chosen to leave that country and seek asylum in a foreign country, rather than move to a place of relocation within his own country where he would have no well-founded fear of persecution, where the protection of his country would be available to him and where he could reasonably be expected to relocate, it can properly be said that he is not outside the country of his nationality owing to a well-founded fear of being persecuted for a Convention

> reason. Although described by a number of different names this relocation alternative has not been recognised for a number of years, at any rate since publication of para 91 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees in 1979:
>
> > "The fear of being persecuted need not always extend to the *whole* territory of the refugee's country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so."
>
> The corollary of this proposition, as is accepted, is that a person will be excluded from refugee status if under all the circumstances it would be reasonable to expect him to seek refuge in another part of the same country.

31 The principle requires, as the above passage makes clear, that the relocation be reasonable. In *Randhawa* Black CJ (at 442) referred to reasonableness, in this context, as "a practical matter" that extends beyond physical or financial barriers. In this connection his Honour quoted the following passage from page 134 of Professor Hathaway's work *The Law of Refugee Status* (Butterworths, 1991):

> The logic of the internal protection principle must, however, be recognised to flow from the absence of a need for asylum abroad. It should be restricted in its application for persons who can *genuinely access* domestic protection, and for whom the reality of protection is *meaningful*. In situations where, for example, financial, logistical, or other barriers prevent the claimant from reaching internal safety; where the quality of internal protection fails to meet basic norms of civil, political, and socio-economic human rights; or where internal safety is otherwise illusory or unpredictable, state accountability for the harm is established and refugee status is appropriately recognized.

32 In *SZATV* the plurality (at [24]) said:

> What is "reasonable", in the sense of "practicable", must depend upon the particular circumstances of the applicant for refugee status and the impact upon that person of relocation of the place of residence within the country of nationality.

33 Their Honours went on to observe, however, that the Convention is concerned with persecution in the defined sense and not with living conditions more broadly. Apart from persecution, the Convention is not directed, for example, to "differential living standards in various areas of the country of nationality, whether attributable to climatic, economic or political conditions": see at [25].

34 Lord Bingham's reference in *Januzi* to a claimant's well-founded fear of persecution at a place "where he lived" was seized upon by the appellant's counsel in oral submissions to advance an argument to the effect that the notion of relocation, and hence the requirement of "reasonableness", always arises if the place of return is different from the place of persecution. This argument was developed in the following way: (a) the appellant lived in Helmand province where he had a well-founded fear of persecution; (b) the IMR reasoned that the appellant could be returned to Jaghori district in Ghazni province; (c) even though the IMR had found that Jaghori was the appellant's own home district, it was nevertheless necessary for the IMR to consider whether it was "reasonable" for the appellant to return there; (d) the IMR did not consider that question of reasonableness.

35 The authorities brought to my attention in which the relocation principle has been discussed all seem to proceed on the basis that relocation arises when the claimant's well-founded fear of persecution is with respect to a place that can be described as the claimant's own home region and that the option of relocation is one directed to an area within the country of nationality that cannot be described as the claimant's own home region. It is in this context that the specific requirement of "reasonableness" has come into play. This position is exemplified, for example, in *Randhawa* and *SZATV* (and the cases referred to therein), as well as in *Januzi*. In each case the question was whether it was reasonable for the claimant to be relocated to a place within the country of nationality that was not the claimant's home region.

36 In *Fadil Dyli v Secretary of State for the Home Department* [2000] Imm AR 652 the rationale for, and application of, the "relocation principle" were discussed by the Immigration Appeal Tribunal in the United Kingdom in the following terms:

> 32. It may be assumed that a person who fears persecution will seek protection within his own country first. The signatories to the Convention expect him to, because his own country has obligations to him arising out of his citizenship or residence: it is only if his own country fails him that the surrogate protection of the international community is engaged through the medium of the Convention. Thus arises the notion of "internal flight". By the time a person's status as a refugee comes to be considered, however, internal flight is no longer a possibility. The claimant is already outside the country of his nationality or former habitual residence. But the principle remains. He is not entitled to be considered as a refugee merely because he has a well-founded fear of persecution in some part of his own country, if there are other parts of that country where he would be safe from persecution.

> 33. A person cannot be removed to a place where he is at risk of persecution. But if he is at risk of persecution in his own home area, he can be expected, on return to his own country, to live in a different area, in order to avoid the risk. There will then be no breach of the Convention in returning him to his own country, despite the risk of persecution in part of it. At this point two further factors enter the equation. The first is that, even if there is a safe area, he cannot properly be returned to his own country if he cannot reach the safe area, or if he cannot do so without being at risk of persecution on the way there – either immediately on arrival or on his subsequent journey within the country. Secondly, he cannot be returned if the safe area is one in which it would be unreasonable or unduly harsh to expect him to live. This is the factor described by Brooke LJ as tempering the definition of a refugee "with a small amount of humanity" (*Karanakaran v Secretary of State for the Home Department* [2000] Imm AR 271 at 279).
>
> 34. Thus the expectation of internal flight is transformed into a rule of internal relocation: on return to his own country a person may have to live in an area that is different from his own home area. It is, however, important to remember the origins of the rule. The question of internal flight only arises when a claimant has a well-founded fear of persecution in his own home area. If he has no such fear there, the possibility of his movement elsewhere simply does not arise. He is not a refugee. If, on the other hand, he has such a fear in his own home area, he may be a refugee: but only if he can show that there is no other part of his own country where he would be safe, which he can reach in safety, and where it would be reasonable (that is to say, not unduly harsh) to expect him to live. A person who has discharged the positive burden of showing that he is at risk of persecution in his own area has still to establish that internal relocation is not feasible in his case.
>
> 35. The concepts of reasonableness and undue harshness have to deal with a person who will have to move to an area that has not been his home. No questions of unreasonableness or undue harshness arise if the claimant has no well-founded fear of persecution in his own area. That is so even if there are other areas of his country where he might have such a fear. Such a person will be a refugee only if he cannot reach his own area without being at risk of persecution on the way.

37 In *Gardi v Secretary of State for the Home Department* [2002] 1 WLR 2755 Keene LJ (with whom Sir Martin Nourse and Ward LJ agreed) accepted (at [27]-[28]) as accurate the statement in *Dyli* that the question of internal flight only arises when a claimant has a well-founded fear of persecution in his own home area. See also *Canaj v Secretary of State for the Home Department* [2001] INLR 342 at [28]-[32] per Simon Brown LJ (with whom Chadwick and Longmore LJJ agreed) where his Lordship posed the question: Why ever should it be "unduly harsh" [unreasonable] to expect a claimant to return to live in his own home area once it is accepted that it is safe for him to do so?

38 I propose to apply the statement of principle in *Randhawa* by Black CJ (at 440-441) which plainly proceeds on the basis that the relocation principle concerns relocation from a claimant's home region to another place in the claimant's country of nationality that is not the claimant's home region. This position is supported by the United Kingdom authorities to which I have referred. In proceeding on this basis I do not think that the reference in the cases to "home region" or "home area" (or similar expressions) is to be given a narrow or restrictive meaning to refer, for example, only to the place where the claimant happens to be living at the time of the feared persecution, or that a "home region" or "home area" is necessarily limited to one location if similar and substantial ties exist at another location that would also appropriately characterise that location as a "home region" or "home area" of the claimant. Whether such ties exist and whether a particular location can be appropriately characterised as a "home region" or "home area" are matters of fact.

39 The respondent Minister relied on these authorities before the Federal Magistrates Court and on this appeal to submit that, in the present case, the relocation principle has no relevant application because the IMR had found that: (a) Jaghori was the appellant's own home district and that (b) the appellant had no well-founded fear of persecution in that place.

40 This submission found favour with the presiding Federal Magistrate. His Honour's acceptance that the relocation principle had no relevant application so far as the appellant's return to Jaghori was concerned no doubt led him to conclude that the fourth ground of the application was, in substance, an impermissible challenge to the IMR's factual finding that Jaghori remained the appellant's home district. I am not persuaded that the presiding Federal Magistrate erred in that regard. The premise of the fourth ground in the application before his Honour was that the appellant's return to Jaghori was an issue of relocation, not merely one of return. However, the appellant's return to Jaghori would only be an issue of relocation if, contrary to the IMR's finding, Jaghori was not the appellant's home district. Thus the appellant's attempt to demonstrate that the IMR erred by failing to treat the issue of his return to Jaghori as one of relocation depended critically on the appellant also demonstrating that the IMR erred in finding that Jaghori was the appellant's home district. Indeed, the particulars to the fourth ground are explicit in attributing error to the IMR on the basis that "any move by the [appellant] to Jaghori would not be a return to his home district but a relocation from Helmand …". At its core, therefore, the fourth ground challenged the IMR's finding that Jaghori was properly to be regarded as the appellant's home district. This

conclusion is fatal to the appellant's appeal. In essence his fourth ground impermissibly sought a merits review of the IMR's factual finding.

41 Quite apart from this conclusion, I am not persuaded that the IMR did not, in any event, consider the reasonableness of the appellant's return to Jaghori in light of the matters that the appellant chose to put before the IMR in that regard.

42 In this connection I have already noted that the IMR specifically raised with the appellant the possibility of his return to Jaghori and the appellant's response to that possibility. I have also noted that the IMR specifically undertook to consider any further material or submissions provided by the appellant. No further submissions or other material were provided in response to the IMR's implicit invitation.

43 In *Randhawa* Black CJ (at 443) observed that the extent of a decision-maker's task in considering a true question of relocation will be largely determined by the case sought to be made by the claimant. In *SZMCD* the Full Court (at [124]) said that the answer to the question whether relocation is practicable "depends upon the framework set by the particular objections raised to relocation".

44 Here the appellant did not advance, as matters to be considered by the IMR, those matters raised by way of argument in the present appeal as relevant considerations to be taken into account on the question of reasonableness, even though the question of the appellant's return to Jaghori had been squarely raised at the time of interview, accompanied by an invitation to the appellant to provide further submissions and material. The IMR was left with only the matters that the appellant had then placed before him concerning his situation. The IMR's reasons plainly show that he considered those matters, as well as the fact that the appellant was born and had lived in Jaghori for approximately 40 years, where he worked on the family farm, and that his association with Helmand province was only for about 18 months when the events concerning the Pashtun landowner occurred. In the present case the appellant advanced as the principal objection to his return to Jaghori his concerns about security from harm by the Pashtun landowner. The IMR rejected those concerns, as a matter of fact, insofar as the appellant said that he would not be safe in Jaghori.

Disposition

45 For these reasons I am not satisfied that the appellant has demonstrated error on the part of the Federal Magistrates Court in dismissing his application to review the recommendation of the IMR. It follows that the appeal must be dismissed. The appellant is to pay the first respondent's costs.

I certify that the preceding forty-five (45) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Yates.

Associate:

Dated: 18 April 2012