FEDERAL COURT OF AUSTRALIA

Applicant M38/2002 v Refugee Review Tribunal [2003] FCA 58

MIGRATION – protection visa – error of law - whether the Tribunal failed to take into account relevant considerations which it was bound to take into account in the making of its decision.

Migration Act 1958 (Cth) ss 48B, 417

High Court Rules O55 r 17, O55 r 30 and O60 r 6
Federal Court Rules O29 r 2

Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24, applied

APPLICANT M38/2002 v REFUGEE REVIEW TRIBUNAL and HON. PHILLIP RUDDOCK, MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS

V 696 OF 2002

MARSHALL J
10 FEBRUARY 2003
MELBOURNE

GENERAL DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA

VICTORIA DISTRICT REGISTRY **V696 OF 2002**

BETWEEN:	**APPLICANT M38/2002** **APPLICANT**
AND:	**REFUGEE REVIEW TRIBUNAL** **FIRST RESPONDENT**
	HON. PHILLIP RUDDOCK, MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS **SECOND RESPONDENT**

JUDGE: **MARSHALL J**

DATE OF ORDER: **10 FEBRUARY 2003**

WHERE MADE: **MELBOURNE**

THE COURT ORDERS THAT:

1. The proceeding be adjourned to a directions hearing at 9.45 am on 21 March 2003.

2. Costs be reserved.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

GENERAL DISTRIBUTION

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY **V696 OF 2002**

BETWEEN:	**APPLICANT M38/2002** **APPLICANT**
AND:	**REFUGEE REVIEW TRIBUNAL** **FIRST RESPONDENT**
	HON. PHILLIP RUDDOCK, MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS **SECOND RESPONDENT**
JUDGE:	**MARSHALL J**
DATE:	**10 FEBRUARY 2003**
PLACE:	**MELBOURNE**

REASONS FOR JUDGMENT

1 This matter was remitted to the Court by an order of the High Court of Australia (Hayne J) dated 1 August 2002. The application initiating the proceeding was filed in the High Court on 9 April 2002. It sought orders for Prohibition, Certiorari and Mandamus in respect of a decision of the first respondent, the Refugee Review Tribunal ("the Tribunal"). The Tribunal's decision affirmed a decision of a delegate of the Minister for Immigration and Multicultural and Indigenous Affairs ("the Minister"), the second respondent to the proceeding, refusing the grant to the applicant of a Protection (Class XA) visa ("protection visa"). The application additionally sought an order prohibiting the Minister from repatriating the applicant to Iran, the applicant's country of origin.

2 On remittal from the High Court, this Court made orders on 25 October 2002 progressing the matter to trial. Paragraph 2 of the orders provided that the applicant file and serve proper particulars of the application. Those particulars were filed on 18 December 2002 and read as follows:

> *"1. The First Respondent failed to take into account relevant considerations in the exercise of its power under the* Migration Act

1958 (Cth) ("the Act").

Particulars

The Tribunal failed to have regard to the statement made in the Applicant's screening interview of 10 June 2000 that his arrest related to a "candidate's voting platform.

The Tribunal failed to have regard to the statement made by the Applicant in the July/August 2000 Delegate Interview that he had been arrested "after the so called local council elections."

2. *The Second Respondent be prohibited from repatriating the Applicant to Iran.*

Particulars

The power to remove a person arises under s.198 of the Act. That power neither requires nor authorises acts amounting to refoulement. Removal of the Applicant to Iran would amount to act of refoulement and is not authorised by the Act."

3 On 30 January 2003, I ordered, pursuant to O29 r 2 of the Federal Court Rules, that the questions arising pursuant to paragraph 1 of the particulars of application "be heard separately from and prior to any other question arising in the proceeding". Consequently, these reasons for judgment deal only with the issue of whether the first respondent fell into error in the exercise of its power under the Act by failing to take into account relevant considerations, in the sense referred to in the first paragraph of the particulars.

Background

4 The applicant, a citizen of Iran, is currently in immigration detention. He arrived in Australia in June 2000 and was detained as an unlawful non-citizen pursuant to the *Migration Act 1958* (Cth) ("the Act").

5 On 10 June 2000, the applicant undertook an Unauthorised Arrivals interview ("the screening interview") with an officer of the Department of Immigration and Multicultural and Indigenous Affairs ("the Department"). The minutes of the screening interview record that the applicant said:

> *"Last year 1999 they objected to a candidate not using a correct sentence in a candidate's voting platform – so I was taken and asked the extent of my allegiance to the IMAM. Three hours of interrogations with my eyes closed facing the wall. I was not allowed to move."*

6 On 30 June 2000, the applicant applied for a protection visa. Attached to the application was

a statement made by the applicant at the detention centre where he was in immigration detention. That statement, dated 30 June 2000, had been translated from Farsi to English.

7 On 9 July 2000, the applicant was interviewed by an officer of the Department ("the July interview"). The interview was recorded. The interview was then translated by an interpreter of the Western Australian Translation and Interpreting Service.

8 On 9 August 2000, a delegate of the Minister refused the grant of a protection visa to the applicant. The July interview formed part of the material before the delegate.

9 On or about 11 August 2000, the applicant applied to the Tribunal for a review of the delegate's decision. The application for review was heard on 13 September 2000 in Sydney, via video link to Port Hedland, where the applicant was held in immigration detention.

10 Regarding the evidence before the Tribunal, the member hearing the application said at p 4 of the Tribunal's reasons for decision:

> *"The Applicant's evidence is contained in the record of an initial interview which took place shortly after his arrival in Australia (because he did not have a passport), in his original application for a protection visa, in a statement accompanying that application, in the record of an interview with an officer of the Department which took place on 9 July 2000 and in the record of the hearing before me."*

11 The applicant's claims before the Tribunal included the claim that when he was still in secondary school he was involved with the leading opposition group in Iran, the Mujahideen-e-Khalq Organisation ("the MKO"), which supports clandestine resistance to the regime in Iran, by distributing newspapers and pamphlets and carrying out terrorist attacks. The applicant claimed that he distributed pamphlets for the MKO and put up posters. He said that he sold the MKO newspaper and worked in a shop that sold MKO books. The applicant claimed that he ceased his activities in respect of the MKO in 1981 when the leader of the MKO was forced to flee Iran and the MKO was suppressed.

12 The applicant claimed that in September 1980, his family had moved from the South of Iran to the North where, unable to continue his schooling, he had commenced working in steel and electricity plants in two cities, Sari and Esfahan. The applicant claimed that he was arrested in Eshafan by the military in 1984 while attending a speech at a mosque. The speech was

made by one of the members of the Hojatieh, a fundamentalist Islamic group said to support the Islamic regime. At the time of his arrest, he claimed, he was making notes of the speech. The applicant claimed that a friend of his had asked him to assist in efforts to alert people about the activities of the group, in particular the fact that they were murdering residents of Eshafan. The applicant claimed he was detained and questioned for three hours and was then released.

13 The applicant also claimed that during his period of military service between 1986 and 1988, he had been detained for a period of 104 or 109 days, during which time he was physically beaten every day, for the reason that his file contained information that he had been involved with the MKO. He claimed he had suffered back pain as a result.

14 The applicant claimed that in March 1999, he was arrested for a second time. In relation to that claim, the Tribunal, said at p 6 of its decision and reasons for decision as follows:

> *"In the statement accompanying his original application the Applicant said that in 1999 the Intelligence Service had come and blindfolded him. They had wanted to know what he thought about Ayatollah Khomeini. The Applicant said that he had been questioned for three hours. They had threatened him, kicked him and called him names. The Applicant said that he had back problems and he had lost some teeth as a result of the beatings. At the hearing before me the Applicant said that he had been arrested after the local council elections in 1377 (in March 1999). He said that he had been campaigning for a friend of his who was a candidate. I asked the Applicant why he had not mentioned this before and he said that he had but that it had not been translated. He said that a friend who knew English had told him what was in the statement accompanying his original application and he had realised that some things were missing. The Applicant said that he did not know exactly why he had been arrested but they believed that he was not supporting the Islamic regime and was not displaying respect for the religious leaders of Iranian society."*

15 The applicant further claimed that in 1999 the intelligence service in Tehran had searched his house as a result of his activities making copies of an audio-tape of a dissident cleric speaking against the current Supreme Leader of Iran, Ayatollah Khameini. He also claimed that in October 1999 he was arrested at his sister's house because he had a copy of an audio-tape and that subsequently, the Intelligence Service had sent a letter to his employers asking them not to employ him any more. Having lost his job in November 1999, the applicant decided to leave Iran. He claimed that he left Iran in March or April 2000, through the proper exits points with an Iranian passport in his own name. The applicant said that he did not have any

trouble leaving Iran through a legal exit point because he had used the services of a people smuggler.

16 On 20 September 2000, the Tribunal affirmed the decision of the delegate.

The Tribunal's reasons

17 In relation to the applicant's various claims the Tribunal, at pp 11-15, found as follows:

> *"**FINDINGS AND REASONS FOR DECISION***
>
> *I accept that when the Applicant was still at school he was involved with the MKO but that his involvement did not continue after the MKO was suppressed in Iran in 1981. I accept that the Applicant was detained while doing his military service because his juvenile involvement in the MKO came to light. However I do not accept that the Applicant has a well-founded fear of being persecuted by reason of his juvenile involvement in the MKO if he returns to Iran now or in the reasonably foreseeable future. The Applicant was issued with an Iranian passport in 1996 and, as the Applicant himself noted, this indicates that he did not have security problems at the time.*
>
> *I accept that the Applicant was arrested and questioned for three hours in 1984. However as the Applicant's evidence developed it appears that he was arrested on this occasion because he was taking notes of a speech made by one of the members of the Hojatieh in a mosque rather than because of his actual or imputed political opinion. In any event no further consequences appear to have flowed for the Applicant as a result of his arrest on this occasion.*
>
> *I do not accept that the Applicant was arrested in March 1999 at the time of the local council elections and questioned about his attitude to Ayatollah Khomeini, as the Applicant said in the statement accompanying his original application. I consider that it is implausible for the Applicant to suggest that he would have been singled out to be arrested and threatened, kicked and beaten for no apparent reason. At the hearing before me the Applicant suggested for the first time that he had in fact been singled out as a result of his involvement in campaigning for a friend in the local council elections. He said that he had mentioned this before but that it had not been translated. However I note that the statement accompanying the Applicant's original application indicates that it was translated back to him in the Farsi language before he signed it. I consider that the Applicant's evidence that he was campaigning for a friend in the local council elections is an embellishment intended to provide some explanation for his arrest on this occasion.*
>
> *I likewise do not accept that the Applicant was arrested again in October 1999 as a result of his role in copying an audio tape of Ayatolah Montazeri speaking against Ayatollah Khamenei and a video tape of a student meeting being disrupted by members of the* Ansar-e-Hezbollah*. I consider that the*

Applicant's evidence with regard to this incident is contradictory and implausible. The Applicant suggested that he had been released on this occasion after only three hours because there was no proof but he claimed that the reason he was arrested in the first place was that a tape had passed from him either directly (as he said at the Departmental interview) or indirectly (as he said at the hearing before me) to a person who was working for the Intelligence Service. The Applicant said that he believed that they thought that if he was free he would do some more things and they could have more proof to arrest him in the future but at the same time he suggested that his involvement in copying and distributing the tapes was regarded sufficiently gravely for the Intelligence Service to write to his employers asking them not to employ him anymore.

Moreover, if the Applicant had been arrested in October 1999 and released after only three hours so that the authorities could gather more evidence against him, I do not accept that he would then have been allowed to leave Iran travelling on a passport in his own name as he did in March or April 2000. As I put to the Applicant, the Australian Department of Foreign Affairs and Trade has advised that travel out of Iran through legal exit points is a reliable indication that a person is of no particular adverse political or security interest (DFAT Country Profile – Islamic Republic of Iran*, March 1996, paragraph 1.7.1.3). The Applicant said that the reason he had been able to leave in this way was that he had paid a smuggler $1,000. However, as I put to him, the Australian Department of Foreign Affairs and Trade has advised that it would appear virtually impossible for Iranians whose names were on the computerised black-list because they were of adverse political or security interest to use bribery to have their names removed to effect a legal departure from Iran (DFAT Country Information Reports Nos. 78/99, dated 18 March 1999, CX34282, and 185/99, dated 1 June 1999, CX35323).*

The Applicant said that the smuggler he had used had had connections with a person who worked for the Ministry of Information in Iran. He suggested that the exit of a person whose name was on the computerised black-list was not as serious as some of the other things that occurred in Iran. However I give greater weight to the independent advice of the Australian Department of Foreign Affairs and Trade in this regard and I conclude that the Applicant was not perceived by the Iranian Government as being of adverse political or security interest at the time that he left Iran. I do not accept, therefore, that he was arrested in October 1999 and released so that the authorities could gather more information against him nor that he was arrested, detained and beaten in March 1999 by reason of his political opinion, real or imputed. I likewise do not accept that the Applicant was dismissed from his employment in November 1999 at the request of the Intelligence Service following his supposed arrest in October 1999.

The Applicant's representatives submitted that the Applicant's lengthy absence from Iran and application for refugee status in Australia were likely to attract suspicion on his return to Iran and that this meant that he was likely to face mistreatment which could be characterised as persecutory. However, as I put to the Applicant, the Australian Department of Foreign Affairs and

Trade has advised that the act of applying for asylum abroad is not, in itself, an offence in Iran. At worst knowledge that an individual had sought political asylum would not result in much more than verbal harassment, unless the asylum-seeker had had a high opposition political profile (DFAT Country Profile – Islamic Republic of Iran*, March 1996, paragraph 1.7.6.2).*

I consider that it is clear that the Applicant does not have a high opposition political profile in Iran. I have rejected above the Applicant's claims with regard to his arrests in March and October 1999 and I do not accept that the Applicant's juvenile involvement in the MKO has given him a significant opposition political profile. Once again I note in this connection that the fact that he left Iran travelling on a passport in his own name indicates that he was of no adverse particular political or security interest to the authorities at the time that he left (DFAT Country Profile – Islamic Republic of Iran*, March 1996, paragraph 1.7.1.3). The Applicant suggested that he would be imprisoned or even killed if he were to return to Iran but I regard the Applicant's claims in this regard as fanciful. I do not accept that there is a real chance that the Applicant will be persecuted by reason of his political opinion, real or imputed, if he returns to Iran now or in the reasonably foreseeable future.*

The Applicant said at the hearing before me that he has converted from Islam, or at least that for the time being he had no religion. He said that he was interested in Christianity and that he was learning about Christianity. He said that if the Iranian Government knew that he wanted to convert to Christianity they would punish him severely. However, as I put to the applicant, the Australian Department of Foreign Affairs and Trade has advised that the evidence is that converts to Christianity who go about their devotions quietly are generally not disturbed (DFAT Country Profile – Islamic Republic of Iran*, March 1996, paragraph 1.7.7.8). The Applicant said that if a Muslim converted he was regarded as an unbeliever and anyone could kill such a person in the street. However, while apostasy is regularly reported as carrying a death sentence there are only one or two high profile cases (involving Christian clergy) where this penalty has actually been imposed (DFAT* Country Profile – Islamic Republic of Iran*, March 1996, paragraph 1.7.7.8).*

As I put to the Applicant, a delegation from a western country which visited the Assemblies of God church in Tehran was told that the Government appeared to be prepared to turn a blind eye to conversions, as long as the church was very discreet and low key in its proselytising activities (DFAT facsimile dated 5 March 1996, CX15554). The Applicant said that he had heard a report on the BBC to the effect that the Iranian Government had asked the leaders of churches in Iran to turn away Iranians who wanted to join their churches. However I do not regard such public pronouncements as necessarily inconsistent with the attitude reported by the Assemblies of God church in Tehran. Obviously the Islamic regime in Iran does not publicly approve of conversions but this does not mean that apostates or converts are in fact persecuted in Iran by reason of their religion. Whether or not the Applicant pursues his interest in Christianity and converts, therefore, I do not

> *accept that there is a real chance that he will be persecuted by reason of his religion if he returns to Iran now or in the reasonably foreseeable future.*
>
> *I have considered the totality of the Applicant's circumstances as someone who had a juvenile involvement in the MKO which led to his detention while he was undertaking his military service in 1986, as someone who has applied for refugee status in this country and as someone who has turned away from Islam and who has expressed an interest in Christianity. However, even taking into account the cumulative effect of all these circumstances, I am not satisfied that the Applicant has a well-founded fear of being persecuted for a Convention reason if he returns to Iran. It follows that he is not a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Consequently the Applicant does not satisfy the criterion set out in subsection 36(2) of the Migration Act for the grant of a protection visa."*

18 By an amended application dated 6 March 2001, the applicant applied to the Court for an order of review of the Tribunal's decision. On 22 March 2001, Carr J heard the application and, on 23 March 2001, his Honour ordered that the application be dismissed.

19 In September 2001, the applicant obtained a transcription of the recorded interview with the delegate dated 9 July 2000. The interview was transcribed by a Farsi Interpreter certified by the National Accreditation Authority for Translators & Interpreters. The transcription stated that references in the interview to the applicant's arrest at the time of local council elections in March 1999 had not been interpreted and transcribed. In particular, the following statement of the applicant was said to have not been interpreted and transcribed:

> *"This was only the last one that they arrested me because of the tapes. Prior to that, I was once arrested after the so-called local council elections. They wanted to examine me what I really thought of Ayatollah-Khamene-ei. It was an ideology test in the Ministry of Information. How they do this, I do not exactly know."*

20 On 26 September 2001, the applicant submitted an application to the Minister for the exercise of his discretion under s 48B and s 417 of the Act to grant the applicant either a humanitarian visa, or to allow the applicant to make a new application based on the errors in translation made during the interview with the delegate. The application under s 48B was rejected by the Minister in late November 2001. In late March 2002, the Minister rejected the application under s 417.

21 On 9 April 2002, the applicant filed an application in the High Court for Writs of Prohibition,

Certiorari and Mandamus and for an injunction. The orders of the High Court remitting the matter to this Court read, so far as it is material, as follows:

> *"1. This application for an Order Nisi for Writs of Prohibition, Certiorari and Mandamus and an Injunction filed in this Court on 9 April 2002 be remitted to the Federal Court of Australia, Victoria District Registry ('Federal Court').*
>
> *2. The application for an Order Nisi proceed in the Federal Court as if steps already taken in the matter in this Court had been taken in the Federal Court.*
>
> *3. Direct that the further proceedings on the remitted application before the Federal Court shall be governed by Order 55 rule 17, Order 55 rule 30 and Order 60 rule 6 of the High Court Rules.*
>
> *…*
>
> *5. Costs of the matter (including the costs of the application to the date of this Order) be costs in the remitted application to the Federal Court."*

Legislative framework

22 The Tribunal's decision is governed by the Act as it stood immediately prior to the coming into operation of the *Migration Legislation Amendment (Judicial Review) Act 2001* (Cth) on 2 October 2001. The jurisdiction of the Court in relation to the Tribunal's decision is principally governed by s 39B(1) of the *Judiciary Act 1903* (Cth) which provides that:

> *"Subject to subsections (1B) and (1C), the original jurisdiction of the Federal Court of Australia includes jurisdiction with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth."*

Enlargement of time

23 Paragraph 3 of the orders made by the High Court on 1 August 2002 remitting the matter to this Court directed that further proceedings on the remitted application be governed by O55 r 7, O55 r 30 and O60 r 6 of the High Court Rules. As the application seeks the constitutional writs of certiorari and mandamus, it would ordinarily be necessary for the Court to assess whether, in the circumstances, it should make an order for the enlargement of time to file the application under those rules. However, given my conclusions on the questions which currently arise for consideration, it is unnecessary to presently determine whether an order enlarging the time within which to make the application should be made.

Applicant's contentions on the existence of a reviewable error

24 The ground of review in paragraph 1 of the Particulars of Application is that the Tribunal failed to take into account relevant considerations in the making of its decision. Counsel for the applicant contended that the Tribunal, in making its decision to affirm the delegate's decision, failed to have regard to certain statements made by the applicant in relation to his purported arrest in March 1999 during both his initial screening interview on 10 June 2000 and the July interview with the delegate. Counsel contended that, therefore, the Tribunal failed to take into account a relevant consideration, and had thereby erred in law.

25 Referring to the screening interview, counsel contended that the delegate who made the decision to refuse the grant of a protection visa, ignored or failed to have regard to the following statement by the applicant, which he was recorded as saying during the screening interview:

> *"Last year 1999 they objected to a candidate not using a correct sentence in a candidate's voting platform – so I was taken and asked the extent of my allegiance to the IMAM. Three hours of interrogations with my eyes closed facing the wall. I was not allowed to move."*

Counsel contended that that statement was ignored in the delegate's findings. Counsel submitted that the statement connects the local council elections with the applicant's claim of arrest, such that it was put by the applicant as a reason for his arrest.

26 The relevant statement in the July interview, quoted at [19] above, was not transcribed, a fact which was revealed when the applicant sought a new transcription. Counsel for the applicant contended that in assessing the truth of the applicant's claim that he had been arrested in March 1999, the first respondent should have had regard to the applicant's statements, albeit which had not been faithfully transcribed, as it was "clearly relevant to the [first respondent's] consideration whether the claim of arrest in March 1999 was credible".

27 Counsel referred to the transcript of the hearing before the Tribunal, in particular at p 13 where it is recorded that the Tribunal asked, "Can you tell me why you've never mentioned before that you were campaigning for a friend of yours in the local council elections?". To this question, the applicant replied as follows:

> *"Yes. I have mentioned this one in the interview which I had with my solicitor or lawyer as well as with a gentleman from the Department of Immigration.*

But in my first interview they have – my lawyer has asked the interpreter to translate all the documents which I have provided and I think they have not translated all the – all parts of the documents. Just they have selected some parts and they have translated some parts of that. Therefore many points is missed."

The Minister's contentions on the existence of a reviewable error

28 In response, counsel for the Minister contended that a failure to consider any particular item of evidence or piece of information will not necessarily give rise to any reviewable error.

29 Counsel further contended that the submission that the Tribunal fell into error is based on a misconstruction of the Tribunal's reasons for finding against the applicant's claim of arrest after the local council elections. Counsel submitted that the reason for the Tribunal's finding against the applicant's claim of arrest on this occasion was the fact that the applicant mentioned for the first time only that the reason for his purported arrest at the time of the elections was that he had been campaigning for a friend. The Tribunal considered this statement, as to the reason for his arrest, made in the hearing before it, to be an "embellishment". It said that:

"I do not accept that the Applicant was arrested in March 1999 at the time of the local council elections and questioned about his attitude to Ayatollah Khomeini, as the Applicant said in the statement accompanying his original application. I consider that it is implausible for the Applicant to suggest that he would have been singled out to be arrested and threatened, kicked and beaten for no apparent reason. At the hearing before me the Applicant suggested for the first time that he had in fact been singled out as a result of his involvement in campaigning for a friend in the local council elections. He said that he had mentioned this before but that it had not been translated. However I note that the statement accompanying the Applicant's original application indicates that it was translated back to him in the Farsi language before he signed it. I consider that the Applicant's evidence that he was campaigning for a friend in the local council elections is an embellishment intended to provide some explanation for his arrest on this occasion."

30 Counsel contended that the missing statement from the July interview (being the statement which escaped the original translation) was to the effect that the applicant had been arrested after the local council elections. There was no mention in the statement, however, that the reason for the arrest at the time of the elections was that the applicant had been campaigning for a friend. Therefore, it was submitted, the statement does not contradict anything in the Tribunal's reasons for decision. Counsel further submitted that the statement recorded in the 10 June 2000 "screening interview" and set out at [5] above, did not assert that the applicant

was campaigning for a friend in the 1999 council elections.

Consideration

31 I accept the submission of counsel for the Minister that the Tribunal did not err by failing to make express reference in its reasons for decision to the applicant's statement at his "screening interview" in June 2000 that his arrest related to "a candidate's voting platform". The relevant portion of the notes of the screening interview, set out at [5] above, makes no reference to the applicant having campaigned for a friend in 1999. The specific reference is to "a candidate". There is no basis for the contention that the Tribunal was, in any event, bound to take that evidence into account in coming to its decision; see *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 39, per Mason J.

32 I also accept the submission of counsel for the Minister that the Tribunal did not fail to take into account relevant considerations by not having regard to the statement made by the applicant in his interview with the delegate that he had been arrested "after the so-called local council elections". The passage from the reasons of the Tribunal, quoted from at [29] above, shows that the Tribunal was aware that a claim to that effect was advanced by the applicant. The Tribunal focused on the applicant's evidence about campaigning for a friend in the elections. It was that aspect of the claim about the applicant's involvement in the elections which the Tribunal considered to be recent embellishment. It was also that aspect of the applicant's claim which was not made with sufficient clarity in his screening interview.

33 I see no merit in the applicant's allegations that the Tribunal failed to take into account relevant considerations in the two specified respects, as referred to in the first particular of the applicant's "Particulars of Application" filed on 18 December 2002. As a consequence, it is unnecessary for the Court to consider whether the applicant is estopped from raising his current grounds of review, given the history of his efforts to obtain refugee status including by a previous application to this Court.

34 I will order that the proceeding be adjourned to a directions hearing at which time the Court will make orders concerning the progressing of paragraph 2 of the particulars of application, which seeks that the Minister be prohibited from repatriating the applicant to Iran. It would assist the expeditious progress of the directions hearing if the parties would file and serve any

written submissions, relevant to any orders they intend to seek at the directions hearing, at least 7 days prior to the directions hearing.

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

Associate:

Dated: 10 February 2003

Counsel for the Applicant:	Mr J Burnside QC with Mr K Farouque (both whom appeared *pro bono*)
Solicitor for the Applicant:	Maurice Blackburn Cashman (acting *pro bono*)
Counsel for the Respondent:	Mr C Horan
Solicitor for the Respondent:	Australian Government Solicitor
Date of Hearing:	3 February 2003
Date of Judgment:	10 February 2003