FEDERAL MAGISTRATES COURT OF AUSTRALIA

MZYLH v MINISTER FOR IMMIGRATION & ANOR *[2011] FMCA 888*

MIGRATION – Review of decision of Refugee Review Tribunal – Applicant seeking a declaration Tribunal's decision unlawful or valid – Applicant a Pakistani national – reasonableness of relocation in all the circumstances – reasoning of Tribunal – writ of certiorari issue – writ of mandamus issue – application remitted to Refugee Review Tribunal.

Migration Act 1958 (Cth), s.91R, s.430

Applicant RV v Minister for Immigration and Multicultural Affairs (2001) 113 FCR 204.
Dornan v Riordan (1990) 24 FCR 564; 95 ALR 451; 21 ALD 255.
Franco-Buitrago v Minister for Immigration and Multicultural Affairs [2000] FCA 1525.
Januzi v Secretary of State for Home Department [2006] 2 AC 426.
Kennedy v Australian Fisheries Management Authority (2009) 182 FCR 411.
Minister for Immigration and Citizenship v MZYHS [2011] FCA 53.
Minister for Immigration and Citizenship v SZLSP [2010] FCAFC 108.
Minister for Immigration and Multicultural Affairs v Singh [2000] FCA 845.
Minister for Immigration and Citizenship v SZNOJ [2011] FCAFC 85.
Minister for Immigration and Multicultural Affairs v Yusuf (2001) 206 CLR 323.
NAIZ v Minister for Immigration and Multicultural Affairs and Indigenous Affairs[2005] FCAFC 37.
Perampalam v Minister for Immigration and Multicultural Affairs [1999] FCA 165; (1999) 84 FCR 274.
Plaintiff M13/2011 v Minister for Immigration and Citizenship [2011] HCA 23.
R v Immigration Appeal Tribunal; Ex parte Jonah [1985] Imm AR 7.
Randhawa v Minister for Immigration, Local Government and Ethnic Affairs (1994) 52 FCR 437.
Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme (2003) 216 CLR 212.
Reg v Immigration Appeal Tribunal; Ex parte Jonah [1985] Imm Ar 7.
Soudakov v Minister for Immigration and Multicultural Affairs [2002] FCA 140.
SZATV v Minister for Immigration and Citizenship (2007) 233 CLR 18.
SZCYT v Minister for Immigration and Citizenship [2008] FCA 737.
SZFDV v Minister for Immigration and Citizenship (2007) 233 CLR 51.
SZMAR v Minister for Immigration and Citizenship [2009] FCA 1530.

SZMCD v Minister for Immigration and Citizenship and Anor (2009) 174 FCR 415.
SZMEI v Minister for Immigration and Citizenship [2008] FMCA 971.
SZNZK v Minister for Immigration and Citizenship and Anor (2010) 115 ALD 332.
WAEE v Minister for Immigration (2003) 75 ALD 630.

Applicant:	MZYLH
First Respondent:	MINISTER FOR IMMIGRATION & CITIZENSHIP
Second Respondent:	REFUGEE REVIEW TRIBUNAL
File Number:	MLG 358 of 2011
Judgment of:	Whelan FM
Hearing date:	14 July 2011
Date of Last Submission:	14 July 2011
Delivered at:	Melbourne
Delivered on:	17 November 2011

REPRESENTATION

Counsel for the Applicant:	Mr M Albert
Solicitors for the Applicant:	Victoria Legal Aid
Counsel for the Respondent:	Mr G A Hill
Solicitors for the Respondent:	Australian Government Solicitor

ORDERS

(1) An order in the nature of a writ of certiorari issue directed to the Second Respondent quashing the decision made on 21 February 2011.

(2) An order in the nature of a writ of mandamus issue directing the Second Respondent to hear and determine the application for review according to law.

FEDERAL MAGISTRATES COURT OF AUSTRALIA AT MELBOURNE

MLG 358 of 2011

MZYLH
Applicant

And

MINISTER FOR IMMIGRATION & CITIZENSHIP
First Respondent

REFUGEE REVIEW TRIBUNAL
Second Respondent

REASONS FOR JUDGMENT

Background

1. This is an application for a judicial review of a decision of the Refugee Review Tribunal ("the Tribunal") made on 21 February 2011. The Applicant seeks a declaration that the decision is unlawful or invalid; an order setting aside the decision; an injunction prohibiting the Respondents from acting upon that decision; and an order compelling the Second Respondent to consider and determine the application for a Protection (Class XA) visa according to law.

2. The Applicant is a Pakistani national. He is a Shi'a Muslim of the Turi tribe. He grew up in the Lower Kurram Agency which is in the North West Frontier Province ("NWFP"). The Applicant arrived in Australia on a Class TU subclass 572 (student) visa on 2 April 2009. On 29 April 2010, he applied for a Protection (Class XA) visa. The Applicant's claim for protection was based on his beliefs; his activities in promoting education for women; his work with a local NGO; and his Shi'a faith.

3. On 21 September 2010, a delegate of the Minister refused the application and on 27 September 2010 the Applicant applied to the Tribunal for a review of that decision. The Tribunal held three hearings at which the Applicant gave oral evidence on 4 November 2010, 2 December 2010 and 19 January 2011. On 21 February 2011, the Tribunal affirmed the delegate's decision not to grant a protection visa.

4. On 18 March 2011, the Applicant applied to this Court for a review of the Tribunal's decision.

The delegate's decision

5. In support of his application, the Applicant provided:

- a medical certificate in relation to injuries sustained by him in December 2007;
- information concerning his involvement with the Kurram Rural Support Organisation ("the KRSO");
- details of his work as a teacher; and
- an 11-page statutory declaration.[1]

6. The statutory declaration set out:

- his family history;
- his opposition to the views of the Taliban;
- his views and activities as a teacher, in particular in relation to the education of girls; and
- his involvement with the KRSO.

7. The Applicant detailed threats made to him by the Taliban and the attack on him on 25 December 2007 where he was injured by a hand grenade and bullets as a result of which, he was rendered unconscious and spent some time recovering from his injuries. He detailed his treatment for these injuries and his movement from Parachinar to Peshawar both for medical treatment and to escape from the Taliban.

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[1] Court Book at pages 65-75.

8. The Applicant detailed his experience in Peshawar and his decision to move to Islamabad for reasons of personal safety. The Applicant stated that he was afraid to go out in Islamabad and detailed his movement to Rawalpindi and Lahore. The Applicant stated why he had left Pakistan and his belief that he would be in danger should he return there.

9. The delegate summarised the Applicant's claim by reference to his work as a teacher of girls and his involvement in the KRSO. The delegate referred to the threats to the Applicant, the attack on him in December 2007 and the injuries he sustained. The delegate referred to his movements after the attack leading up to his visa application to come to Australia.[2]

10. The delegate found that the grounds of religion and political opinion were the reasons claimed by the Applicant to fear harm for a Convention reason. The delegate did not consider the Applicant's fear of persecution on the basis of his religion to be well-founded. The delegate accepted the Applicant's claims that he was attacked by the Taliban in 2007 for educating women and girls. The delegate went on to say:

> *I have serious concerns however regarding the plausibility of the applicant's account of his experiences in Pakistan spanning the 2 years after the attack occurred, and prior to his arrival in Australia.*[3]

The delegate set out these concerns in relation to the Applicant's claim that he was attacked in Peshawar and Islamabad and also to the claim that he was being financially supported by his brother while in Peshawar and Islamabad.

11. The delegate also referred to a report from Foundation House in relation to the Applicant's mental health. The delegate formed the view that while the Applicant, *"may have been initially attacked by the Taliban in 2007"*,[4] having ceased his teaching activities and association with the KRSO, he was able to *"safely relocate either within Parachinar or elsewhere in Pakistan without further incident"*.[5] The

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[2] Court Book at pages 83-94.
[3] Court Book at page 91.
[4] Court Book at page 92.
[5] Court Book at page 92.

delegate was not satisfied that the Applicant *"would retain a political profile that would be likely to result in persecution . . . upon return to Pakistan"*.[6]

12. The delegate found that there was no evidence to suggest that the Applicant would encounter difficulties in relocating to another part of the country.

The Tribunal's decision

13. In support of his application for review by the Tribunal, the Applicant provided:

- a further eight-page statutory declaration;
- two letters from Dr Karen Linton, a General Practitioner at the Western Region Health Centre;
- a letter from Dr Andrew Firestone, a consultant psychiatrist;
- a report from Mr Mike Bromhead, a counsellor with Foundation House;
- material from Amnesty International; and
- four written submissions by the Refugee Immigration Legal Service.

14. The Applicant's statutory declaration referred to the profile of his family and his own profile amongst Sunni Muslims from the Kurram Agency, some of whom have been displaced from other areas of Pakistan. He challenged the delegate's view that he was no longer of interest to the Taliban. He gave details of his mental state after the attack on him in December 2007. He also gave further details of his experiences in Peshawar, Islamabad and Rawalpindi. He also explained how his brother got money to him.

15. The Applicant further detailed incidents which had happened to other people he knew from Kurram Agency, including kidnapping and shooting by the Taliban. He gave reasons for his belief that as a Shi'a

[6] Ibid.

and a Turi he would be identified outside the Kurram Agency and would be in danger from the Taliban or extremist Sunni organisations. He also explained his concerns about his mental health should he return to Pakistan.

16. Dr Linton described the Applicant as *"suffering from severe depression and severe post traumatic stress disorder"*.[7] She considered him to be a suicide risk. She described his psychological symptoms as having *"amplified since being in Australia"*.[8] She described his mental state as *"very precarious"*.[9]

17. Dr Firestone described the Applicant as *"quite severely depressed"*[10] and his condition as *"chronic severe adjustment disorder with mixed anxiety and depressive features"*.[11]

18. In her second letter, Dr Linton described the Applicant's physical injuries which she described as consistent with *"either a penetrating entry and exit wound or two separate penetrating injuries"*[12] in relation to his thigh and injuries to his abdomen consistent with *"either gunshot or shrapnel injuries"*.[13] She also added that his psychological state was *"deteriorating as time progresses"*.[14] She referred again to his psychological state as *"very precarious"*[15] and as him having *"suicidal thoughts"*.[16] She reiterated that she considered him to be a suicide risk.

19. Mr Bromhead also referred to the Applicant as suffering from Post Traumatic Stress Disorder with consistent symptoms of depression and recent and past history of suicidal thoughts.[17] He also considered the Applicant to be at risk of self-harm.[18]

20. The Tribunal stated that it had before it the Department's file and had *"had regard to the material referred to in the delegate's decision"*.[19]

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[7] Court Book at page 111.
[8] Ibid.
[9] Court Book at page 112.
[10] Court Book at page 151.
[11] Ibid.
[12] Court Book at page 153.
[13] Ibid.
[14] Court Book at page 154.
[15] Ibid.
[16] Ibid.
[17] Court Book at page 168.
[18] Court Book at page 169.
[19] Court Book, page 216 at paragraph 14.

The Tribunal reproduced the Applicant's first statutory declaration and referred to the documents submitted by the Applicant in support of his application.

21. The Tribunal recorded the Applicant as identifying the basis on which he feared persecution as being:

- A member of a well-known family in the Parachinar area;
- A Shi'a;
- A Turi;
- A worker with the KRSO;
- A teacher educating girls; and
- A member of Al Ghazai (a small village-based organisation).

22. The Tribunal summarised what the Applicant stated in relation to each of those claims. The Tribunal also summarised the Applicant's narration of his personal history leading up to the attack on him in December 2007 and his movements within Pakistan after that event. He was also questioned by the Tribunal about his delay in making an application for a protection visa after arriving in Australia.

23. At the third hearing, the Tribunal questioned the Applicant about his claims that the Taliban targeted KRSO workers. He was also questioned about why he would not be at less risk of being targeted by the Taliban if he lived in Islamabad. The Tribunal also questioned the Applicant about whether he could live in Rawalpindi–Islamabad as a Turi and a Shiite.

24. At paragraph 101 of the decision, the Tribunal stated that in addition to the Country Information provided by the Applicant, the Tribunal had had regard to *"the following information"*.[20] This information is set out under the headings:

- General Information: Sunni and Shia;
- The Kurram Rural Support Organisation;

[20] Court Book at page 240.

- Other NGOs;
- Turi;
- State Protection: in FATA;
- State protection: outside FATA;
- The treatment of failed asylum seekers;
- "Returnees from the West";
- Pro West opinion, liberal beliefs and being a former student in a Western country;
- Teachers;
- Relocation to another part of Pakistan; and
- Relocation for a member of the Turi tribe.

25. This last heading has several sub-headings:

- Kohat;
- Hangu;
- Peshawar;
- Dera Ismail Khan;
- Karachi;
- Quetta; and
- Rawalapindi/Islamabad.

26. Under the heading *"Discussion"*, the Tribunal states that, *"[t]here were two aspects of the applicant's account which created some concern about whether he is a reliable witness and whether his evidence should be accepted"*.[21] The Tribunal then refers to the issue of

[21] Court Book, page 264 at paragraph 187.

delay in lodging a protection visa application and *"inconsistency about the trauma that led to his injury"*.[22]

27. Before dealing with those issues the Tribunal referred to the medical evidence before it. At paragraphs 190 to 192 of its decision the Tribunal purports to summarise the diagnosis of the Applicant's condition. It then goes on to say:

> *The reports by the general practitioner and the psychiatrist merely reflect the applicant's instructions to those medical practitioners and comment on his demeanour and do not detail the memory or psychological tests or processes adopted, if any, that led to the formation of the diagnoses made. In addition, whilst the Tribunal has no reason to doubt and accepts Mr Firestone's claim to be a consultant psychiatrist his report omits reference to his qualifications other than a graduate diploma in Transcultural Psychiatry. Having regard to the practitioners' experience in dealing with trauma victims and accepting the qualifications implied in the psychiatrist report, however, the Tribunal gives weight to the reports and finds that the applicant suffers from the disorders referred to herein. The Tribunal also notes the scarring to the applicant's torso and leg clearly indicates extensive injuries, said to have been sustained as a result of being shot and attacked with a grenade.*[23]

28. The inconsistency issue appears to relate to a statement by the Applicant on 4 November 2010 that he had taken one bullet during the grenade attack and the fact that in his first statutory declaration he had stated that he had taken two bullets in the leg. The Tribunal considered that a person would know whether one bullet or two had been fired into their leg and took the view that this inconsistency *"diminishes the cogency of his evidence about the 25 December 2007 incident"*.[24] The Tribunal then went on to deal with the issue of delay in lodging the protection visa application – a year after the Applicant's arrival in Australia.

29. The Tribunal considered that:

> *the applicant's delay in seeking protection, coupled with the inconsistency about the number of times he was shot on*

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[22] Court Book, page 265 at paragraph 188.
[23] Court Book at pages 265-266.
[24] Court Book, page 266 at paragraph 194.

> *25 December 2007, casts doubt on whether the trauma was caused by an accident or, as he claims, a firearm and grenade attack. If the latter . . . it is unclear whether the trauma was caused by (a) an attack specifically on him or (b) an incident of random or generalised violence.*[25]

30. The Tribunal also considered the delay and inconsistency raised some doubt about the veracity of his claims to be a member of the KRSO, a Turi and his other claims of Convention nexus as well as the claimed incidents of harassment and persecution.[26]

31. The Tribunal however considered that the Applicant's evidence was generally consistent and that some of it was supported by documentation. It was therefore satisfied that the Applicant's views, including a commitment to equality for women, had a 'political' dimension at least to the extent of identifying him as not being a supporter of the Taliban. The Tribunal was also satisfied that he spoke out against extremist groups and was involved in promoting the education of women.

32. The Tribunal also accepted that the Applicant was:

- a Shi'a (religion, particular social group);
- a Turi (particular social group, race);
- a worker with the KRSO (particular social group);
- a teacher who taught girls (particular social group, 'imputed political opinion');
- a failed asylum seeker (imputed political opinion);
- a former student of a Western country;
- a member of his 'Al Ghazai'; and

[25] Court Book, pages 269-270 at paragraph 203.
[26] Court Book, page 270 at paragraph 205.

- a member of a well-known family, the head of which was subjected to harm for a Convention reason (holding anti-Taliban views).[27]

33. The Tribunal also accepted that the Applicant was the victim of a shooting and grenade attack and *"sustained serious physical injuries and significant psychological sequels including post-traumatic stress disorder, anxiety and depression"*.[28]

34. The Tribunal found that *"all FATA and NWPF are extremely dangerous parts of Pakistan and there is no effective State protection against Convention related violence"*.[29] The Tribunal accepted that the Applicant could be harmed in Federally Administered Tribal Areas ("FATA") and the NWFP for reasons including the Convention reasons of his religion (Shi'a) and his membership of particular social groups (the Turi tribe, the KRSO and his family) and political opinion (his views on women and education).[30]

35. The Tribunal found however that *"the chance that the applicant would happen* (sic) *be at one of the thousands of Shia mosques where there is such an attack, is remote"*;[31] that if relocating to an area outside of FATA and NWFP he would not have a well-founded fear of persecution by virtue of being a Turi and a member of his family, or that his activities with the KRSO and/or Al Ghazai, and speaking out against the Taliban when he lived in Kurrum Agency would cause extremists to pursue him in another part of Pakistan.

36. The Tribunal found no evidence that working as a teacher or being a failed asylum seeker or a returnee from the West would have any adverse consequences for him or that there was more than a remote chance that he would face persecution on account of his religion, his race, his political opinion or his membership of the particular social groups raised if he were to return to live in Pakistan away from the FATA and the NWFP.[32]

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[27] Court Book, page 271 at paragraph 206.
[28] Court Book, pages 271-272 at paragraph 207.
[29] Court Book, page 272 at paragraph 208.
[30] Court Book, page 272 at paragraph 209.
[31] Court Book, page 274 at paragraph 214.
[32] Court Book, page 275 at paragraphs 218-220.

37. On the issue of whether it was reasonable for him to relocate, the Tribunal said:

> *It has been submitted that it is not practicable for the applicant to relocate because his psychological problems would make it unreasonable for him to relocate.*
>
> *As indicated above, the Tribunal accepts that the applicant is suffering from anxiety and other conditions outlined in medical and other reports. This forms part of the Tribunal's consideration of the reasonableness of relocation. The Tribunal also understands that the applicant may not have any family or community support elsewhere in Pakistan. However, he is a tertiary-educated man with some years of teaching experience. He speaks Urdu, Pashto and English and has demonstrated the adaptability of moving to (after the trauma was inflicted) Australia and studying here until his course was terminated as a result of the closure of his college. There are no reports of which the Tribunal is aware which indicate that he would be unable to obtain employment in another part of Pakistan on account of his religion, tribe or other Convention characteristic or that he would be denied treatment for his psychological conditions. Despite his ongoing psychological difficulties, the Tribunal does not consider that the applicant would not be able to find accommodation and employment if he were to return to Pakistan.*[33]

The grounds of the application

38. The grounds of the application were stated as:

> *The Tribunal erred by asking the wrong question in relation to relocation within a country by a refugee claimant in that it limited its consideration to assessing where there was a real chance of persecution on a Convention ground.*
>
> *The Tribunal erred by failing to take into account relevant considerations when determining the reasonableness of relocation by the applicant. The Tribunal failed to consider whether the applicant would, in the place of relocation:*
>
> *i) have available to him treatment, services and/or support for his psychiatric condition;*

[33] Court Book, pages 279-280 at paragraph 231.

> ii) *be able to engage in employment in view of his psychiatric condition;*
>
> iii) *enjoy protection that met the basic norms of civil, political and socio-economic human rights;*
>
> iv) *attain safety that was not illusory or unpredictable.*
>
> *The Tribunal erred by failing to observe the procedures required by s.430 of the Migration Act (1958) in that its written statement was substantially copied without attribution from other sources, was repetitive and was riddled with spelling and grammatical errors.*[34]

The Applicant's submissions

First ground

39. The Applicant submits that the Tribunal's rejection of the Applicant's protection visa application was based on the reasoning that it would be reasonable for him to relocate within Pakistan. The Applicant submits that the Tribunal applied the wrong test in determining if relocation was reasonable. The test applied by the Tribunal is set out at paragraph 210 of its Reasons.[35] The error by the Tribunal is to require that the reasonableness of the relocation be linked to Convention reasons; the reasonableness is determined exclusively by reference to how the person will be treated because of a Convention characteristic. This is the wrong test. The actual test requires that the relocation be reasonable for that particular individual, taking everything into account, not just his or her Convention characteristics.

40. The test is correctly stated and applied in a series of cases starting with *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs*[36] and affirmed in *SZATV v Minister for Immigration and Citizenship*[37] and most recently *in Plaintiff M13/2011 v Minister for Immigration and Citizenship*,[38] where the Court held at paragraph 21:

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[34] Amended application filed 24 June 2011.
[35] Court Book at page 272.
[36] *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437.
[37] *SZATV v Minister for Immigration and Citizenship* (2007) 233 CLR 18.
[38] *Plaintiff M13/2011 v Minister for Immigration and Citizenship* [2011] HCA 23.

Consideration may be given to the possibility of a claimant for protection relocating in the country of origin if relocation is a reasonable (in the sense of practicable) response to the fear of persecution[4]. As three members of this Court pointed out in SZATV v Minister for Immigration and Citizenship[5], "[w]hat 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".[39]

41. In this case the Applicant submits that the Tribunal considered a narrower test, which assessed whether he would be subject to persecution for a Convention reason. The consideration, where it appears in relation to his mental health, is isolated from the consideration of the test for relocation. The test needs to be applied in a holistic way, considering all of the circumstances of the Applicant. It is critical that the Applicant's mental health needs were taken into account, pivotal to the decision, and that those needs amounted to preventing him from committing suicide.

42. It is not a question of whether he will be denied employment or treatment for a Convention reason but whether it is reasonable to relocate to a place where there will be no treatment available at all.

43. At paragraph 212[40] the Tribunal identifies the correct test but in the material that follows does not apply that test. Instead what is applied is the test set out at paragraph 210.[41] This is set out at paragraphs 231 to 235.[42] The Applicant refers in particular to the following (original emphasis):

*[T]he Tribunal does not accept that the applicant has a well-founded fear of being **targeted** for **serious harm for a Convention reason** if he returns to an area of Pakistan **outside FATA or NWFP**.*[43]

44. The Applicant further proposed a more lenient test based on the opinion of Professor Hathaway as quoted by the Federal Court in *Randhawa*:

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[39] Ibid at paragraph 21.
[40] Court Book at pages 273-274.
[41] Court Book at page 272.
[42] Court Book at pages 279-281.
[43] Court Book, page 281 at paragraph 235.

…the internal protection principle…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 recognised. [Original emphasis]*[44]

45. Would the relocation allow the person to live in a place where the reality of protection is meaningful? The Tribunal member was aware that the Applicant was a suicide risk and protection would not be meaningful at all if soon after relocating he were to kill himself. The Tribunal failed in substance to consider whether the Applicant could relocate within Pakistan to a place where the basic norms of civil, political and socio-economic human rights would be available to him. The Tribunal looked at the irrelevant question about whether the Applicant could access in a physical sense rather than whether he could relocate in a broader sense of having a life in another place.

46. The Applicant also submits that a wrong question was asked in the sense that the Tribunal was required to address the question as to where the Applicant could relocate. At paragraph 227 the Tribunal states:

Whilst it is not necessary for an applicant to prove past persecution, the lack of cogent evidence from him of persecution outside FATA and NWFP combined with the country information leads the Tribunal to conclude that there is not a real chance of persecution being directed at the applicant outside FATA and NWFP for the claimed convention reasons.[45]

47. Paragraph 227 of the decision therefore suggests that the Applicant could live anywhere except the FATA or the NWFP. At paragraph 235 however the Tribunal says (original emphasis):

However, with the possible exception of Karachi, the Tribunal does not accept that the applicant has a well–founded fear of being ***targeted*** *for* ***serious harm for a Convention reason*** *if he returns to an area of Pakistan* ***outside FATA or NWFP.*** *The*

[44] *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437.
[45] Court Book at page 279.

> *Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.*[46]

48. At this stage it appears that Karachi is added. Then at paragraph 232 the Tribunal considers:

> *The applicant claims to have lived elsewhere in Pakistan including Peshawar, and Islamabad-Rawalpindi and to have been exposed to persecution in those other cities. However, as already indicated, his evidence of actual persecution or threatened persecution in those cities was, tenuous although the Tribunal notes that his claim was that he was able to avoid serious harm only by giving up his studies (in Peshawar) and remaining in hiding (in Peshawar and Rawalpindi). The Tribunal nevertheless considers that the Country information cited above indicates that whilst some cities such as Karachi would not be viable given the similar dangers of Convention related persecution and Lahore is perhaps not viable as there is no established Pashtun community, there is no evidence to indicate that other parts of Pakistan could not be reasonably accessed by the applicant.*[47]

49. It appears that the Tribunal then adds Lahore. Albeit that the findings are inconsistent, the corollary of it is that the Applicant could reasonably relocate and would not have a real chance of Convention–based persecution anywhere else in Pakistan. Yet the Country Information relied upon says something different. At page 139 of the Court Book, there is a quote from *The New York Review* in 2009 which says that the Taliban are now penetrating into the Punjab. The Punjab includes Lahore and Islamabad.

50. At paragraphs 111 to 113[48] the Tribunal deals with Quetta and at paragraph 181 it says, *"Over the past decade Quetta has become one of most dangerous cities in South Asia for Shi'ites and subsequently, it does not constitute a safe-haven for Pashtun Shi'ites"*.[49]

51. There is therefore evidence, within the Court Book itself, that other parts of Pakistan could not reasonably be accessed by the Applicant.

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[46] Court Book at page 281.
[47] Court Book at page 280.
[48] Court Book at pages 243-244.
[49] Court Book at pages 263-264.

52. In *Plaintiff M13*,[50] the Court referred to the failure of the decision-maker to identify a place to which the plaintiff could relocate. The Tribunal in this case has similarly failed to identify a place to which the Applicant could relocate. As Black CJ stated in *Randhawa*:

> *In the present case the delegate correctly asked whether the appellant's fear was well-founded in relation to his country of nationality, not simply the region in which he lived. Given the humanitarian aims of the convention this question was not to be approached in a narrow way and in her further analysis the delegate correctly went on to ask not merely whether the appellant could relocate to another area of India but whether he could reasonably be expected to do so.*
>
> *This further question is an important one because notwithstanding that real protection from persecution may be available elsewhere within the country of nationality, a person's fear of persecution in relation to that country will remain well-founded with respect to the country as a whole if, as a practical matter, the part of the country in which protection is available is not reasonably accessible to that person. In the context of refugee law the practical realities facing a person who claims to be a refugee must be carefully considered.*[51]

53. The Applicant also questioned whether the contents of pages 256 to 264 of the Court Book could be characterised as 'findings' of the Tribunal. They are in fact unattributed passages copied and pasted from one of the resources referred to by the Tribunal.

Second ground

54. On the second ground, the Applicant submitted that the Tribunal failed to consider whether the Applicant would, in the place of relocation, have available to him:

- treatment, services and/or support for his psychiatric condition;
- whether he would be able to engage in employment in view of his psychiatric condition;

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[50] *Plaintiff M13/2011 v Minister for Immigration and Citizenship* [2011] HCA 23.
[51] *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 442.

- whether he would enjoy protection that met the basic norms of civil, political and socio-economic human rights; and
- whether he could attain safety that was not illusory or unpredictable.

55. This involves the interpretation and application of the law concerning relocation and the ambit of matters which can be considered when determining whether relocation is reasonable. The Applicant refers to the decision of Tamberlin J in *Franco-Buitrago v Minister for Immigration and Multicultural Affairs*[52] at paragraph 18:

> *In my view, the express exclusion from consideration by the decision-maker of material relating to the child's health amounted to an error of law within s476(1)(e) of the Act because it involved both an incorrect interpretation and application of the law concerning relocation and the ambit of the matters which can be considered when determining whether relocation is reasonable in accordance with the internal protection principle: cf Perampalam v Minister for Immigration and Multicultural Affairs (1999) 84 FCR 274 at para 19-para 22 per Burchett and Lee JJ, and para 32-para 35 per Moore J where the members of the Court re-emphasised the need for a careful examination of the practical difficulties an applicant may face in relocating and obtaining protection in the country of nationality. The considerations as to the child's health could not properly be said to be irrelevant or insignificant.*[53]

56. The decision of Black CJ in *Randhawa* makes clear that the Tribunal was required to *"carefully"* consider *"the practical realities facing a person who claims to be refugee"*.[54] That view has recently been endorsed by the Court in *Plaintiff M13*.[55] The same view was supported and expanded on by Lee and Burchett JJ in *Perampalam v Minister for Immigration and Multicultural Affairs*[56] in which their Honours stated that it is not necessary that there be a Convention reason that makes relocation unreasonable.

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[52] *Franco-Buitrago v Minister for Immigration and Multicultural Affairs* [2000] FCA 1525.
[53] Ibid at paragraph 18.
[54] *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437.
[55] *Plaintiff M13-2011 v Minister for Immigration and Citizenship* [2011] HCA 23.
[56] *Perampalam v Minister for Immigration and Multicultural Affairs* (1999) 84 FCR 274.

57. In this case the Tribunal found that the Applicant was a person suffering from severe depression, severe post-traumatic stress, chronic severe adjustment disorder and anxiety. There was evidence that the Applicant was a suicide risk. The Tribunal failed however to consider the Applicant's condition as a practical matter affecting the reasonableness of the Applicant relocating elsewhere in Pakistan. The Tribunal did look at the issue but in a limited way. At paragraph 231 of the Decision the Tribunal confirmed its consideration to whether the Applicant *"would be denied treatment for his psychological condition"*.[57] What the Tribunal was required to consider was whether such treatment would be available at all.

58. The Tribunal found at paragraph 231 that, *"[t]here are no reports of which the Tribunal is aware which indicate ... that he would be denied treatment for his psychological conditions"*.[58] The Tribunal in doing so failed to consider the Applicant's statutory declaration of 2 November 2010.[59] The Tribunal could also have referred to the RRT Country Report PAK 35608 which notes that *"[t]here is a shocking level of ignorance and moral suspicion of the mentally ill even among those who work in hospitals"* and that *"[t]here is only one psychiatrist for every 10,000 people in Pakistan"*.[60]

59. The Tribunal also incorrectly considered whether the Applicant would be able to find employment when it should have considered whether the Applicant would be able to undertake employment given his mental condition.

60. Relocation requires a consideration of all of the circumstances that may affect living in a different place within the same country including public safety, protection of basic human rights and availability of health services fitted for the condition of the Applicant. In this case, health services for survival purposes.

Third ground

61. In relation to ground 3, the Applicant submitted that the Tribunal had failed to meet the requirements of s.430(1)(d) of the *Migration*

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[57] Court Book at page 280.
[58] Court Book at page 280.
[59] Court Book at pages 113-120.
[60] Refugee Review Tribunal, RRT Research Response, PAK35608, 23 October 2009.

Act 1958 (Cth) ("the Act"). The written statement was substantially copied without attribution from other sources. It was repetitive and riddled with spelling and grammatical errors.

62. The Applicant referred to *Minister for Immigration and Multicultural Affairs v Singh*.[61] Section 430 of the Act contemplates the Tribunal engaging actively in a logical process. The Applicant referred to passages from the Tribunal's decision to illustrate that the Tribunal did not actively intellectually engage in the decision-making task required by s.430. The result fails to demonstrate the logical reasoned process required of decision-makers.

63. The Applicant argues four bases on which he makes this submission. First, the member of the Tribunal has adopted significant portions of his decision from other sources without attribution – seven pages are copied from the Tribunal Country Advice without attribution and paragraphs 5 to 13 from decisions of other Tribunal members. Only 136 of the 236 paragraphs of the decision are original. The copying of significant chunks indicates that the Country Information was not considered in any meaningful way and was certainly not the result of an active intellectual process. The Applicant refers in this respect to the material on Quetta.

64. The Applicant took the Court to the decision in *Minister for Immigration and Citizenship v SZLSP*[62] and sought to distinguish *Minister for Immigration and Multicultural Affairs v Yusuf*[63]on the basis that the latter decision dealt with s.430(1)(c) and was limited to that. At paragraphs 53 and 54 of the decision in *SZLSP*, Kenny J said:

> *In the specific context of s 430(1)(d), this court said in Minister for Immigration and Multicultural Affairs v Gutierrez (1999) 92 FCR 296 that "[t]he purpose of s 430(1)(d) is to arm the reader of the decision with an understanding of the steps by which the Tribunal reached its decision" (at 300 [13] per North J). See also Li 176 ALR at 75 [44] in which the Full Court observed that one of the purposes of s 430(1)(d) was to "expose[ ] ... error".*
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> *The court's function is, of course, to review decisions for jurisdictional error, and not to review reasons. There may be*

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[61] *Minister for Immigration and Multicultural Affairs v Singh* [2000] FCA 845.
[62] *Minister for Immigration and Citizenship v SZLSP* [2010] FCAFC 108.
[63] *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323.

> *cases where what appears on the face of the tribunal's reasons to be a jurisdictional error is shown by the record before the reviewing court to be merely a failure to comply with s 430. Such a failure does not constitute jurisdictional error. In the case of a failure to comply with s 430, the appropriate course for an aggrieved applicant is to seek an order compelling the tribunal to comply with its obligations under s 430. The ensuing written statement may or may not reveal jurisdictional error: cf Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme (2003) 216 CLR 212 (Ex parte Palme) at 224–25 [41]–[46] per Gleeson CJ, Gummow and Heydon JJ; and Kennedy v Australian Fisheries Management Authority (2009) 182 FCR 411 at 435 [70] per Tracey J.*[64]

65. In this case, on the Applicant's submission, reading the decision does not allow an understanding of the steps by which the Tribunal reached its decision. The steps involved were to copy and paste not to engage in any meaningful process. At paragraph [72] her Honour said that it was appropriate to infer that the Tribunal's decision-making was arbitrary and irrational such as to constitute jurisdictional error.[65]

66. At paragraph [83] Rares J adds to this:

> *Their Honours attached significance to the section's requirement to set out the facts that the tribunal considered material to its conclusion. That requirement is an important safeguard prescribed by the parliament for the effective judicial review of the decisions of an administrative body. The tribunal is not required to deal in its written statement under s 430(1) with every possibility that could be adverted to or is raised by the applicant for review. The duty to prepare a written statement must be sensibly interpreted and applied with a view to achieving good and effective administration: Dornan v Riordan (1990) 24 FCR 564 at 567; 95 ALR 451 at 455; 21 ALD 255 at 256 per Sweeney, Davies and Burchett JJ. And the obligation imposed by s 430(1) requires the tribunal to set out and refer to the matters identified in each of paras (a)–(d) of the subsection. That obligation involves the tribunal recording what it did, not what it was asked to do, or supposed to do, or might have done.*[66]

And further adds at paragraph 86:

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[64] *Minister for Immigration and Citizenship v SZLSP* [2010] FCAFC 108.
[65] Ibid at paragraph 72.
[66] *Minister for Immigration and Citizenship v SZLSP* [2010] FCAFC 108.

> *However, the requirements of s 430(1) impose on the tribunal the task of preparing in writing its reasons, findings of facts and identifying what basis it had for these. This is an adjunct to the ability of a person affected by the decision to challenge it. Hence, the importance the courts have placed on the absence from the written statement under s 430(1) and its analogues of some matter that would have demonstrated that the decision was made according to law or not affected by jurisdictional error. A written statement ensures transparency in the tribunal's exercise of a power conferred on it by the parliament. This transparency is essential under s 430 to enable the court to exercise the judicial power of the Commonwealth in reviewing whether the decision was made according to law or affected by a jurisdictional error.*[67]

67. The second basis on which the Applicant says the Tribunal failed to comply with s.430 is the significant spelling and grammatical errors in the decision. These demonstrate a lack of care and diligence and give rise to the implication that the questions in issue were not considered carefully or diligently. The Applicant pointed to numerous examples.

68. Third, the decision contains numerous incidents of repetition even within the same paragraph.

69. Fourth, the statement is unclear and it is not possible in some instances to determine if statements are quotations or findings.

70. The Applicant referred to the decision of Perram J in *SZNZK v Minister for Immigration and Citizenship and Anor*[68] and to his comments about the decision, in that matter, giving the impression that there had *"been carried out a mechanical process of cutting and pasting devoid of cognitive activity"*.[69] The same could be said of this decision.

The First Respondent's submissions

71. The First Respondent submitted that the Tribunal identified the correct test for relocation at paragraph 212 of its decision.[70] The process involved, first, finding if the person has a well-founded fear of persecution; second, if they have a well-founded fear of persecution in other parts of the country; and third, if it is reasonable, in the sense of

[67] Ibid at paragraph 86.
[68] *SZNZK v Minister for Immigration and Citizenship and Anor* (2010) 115 ALD 332.
[69] *SZNZK v Minister for Immigration and Citizenship and Anor* (2010) 115 ALD 332 at [38].
[70] Court Book at pages 273-274.

practicable for them to relocate to another part of the country. In paragraphs 214 to 229 the Tribunal deals with the second question.[71] That may involve findings of reasonableness and truth and in this case once you get past the incident in 2007, the Tribunal does not accept that the other incidents described by the Applicant amount to persecution.

72. In paragraph 230 and following, the Tribunal addresses the practicality of relocation. The reason put forward why relocation was not practicable was the Applicant's mental state. This is addressed by the Tribunal. As long as the Tribunal asks itself the right question, a question of whether relocation is reasonable is a finding of fact.[72]

73. The Tribunal then goes on to deal with the Applicant's subjective fears but finds that based on Country Information there is no objective well-founded fear.

74. The First Respondent submits that the statement of the issue in paragraph 210 of the Tribunal's decision[73] is 100% correct.

75. The issue is – can you reasonably relocate to a place where you won't fear persecution? The First Respondent dealt with the decision in *SZATV v Minister for Immigration*[74] and *SZFDV v Minister for Immigration*[75] which, it is submitted, clearly indicate that the place to which a person can reasonably relocate is a place where the person will not have a well-founded fear of persecution on a Convention ground.

76. The First Respondent submitted in relation to *SZATV* (the First Respondent's emphasis):

> *29.1 Gummow, Hayne and Crennan JJ* ***accepted*** *a submission of the Minister that the issue is whether it is "reasonable, in the sense of practicable, for the appellant to relocate to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution: SZATV (2007) 233 CLR 18 at [23] (Gummow, Hayne and Crennan JJ). Contra Applicant's submissions, para 9 which states that the Court rejected that*

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[71] Court Book at pages 274-279.
[72] *SZMAR v Minister for Immigration* [2009] FCA 1530; *SZMEI v Minister for Immigration* [2008] FMCA 971.
[73] Court Book at page 272.
[74] *SZATV v Minister for Immigration* (2007) 233 CLR 18.
[75] *SZFDV v Minister for Immigration* (2007) 233 CLR 51.

proposition. See SZFDV v Minister for Immigration (2007) 233 CLR 51 at [14] (Gummow, Hayne and Crennan JJ): "as a general proposition to be applied to the circumstances of the particular case, it may be reasonable for the applicant for a protection visa to relocate in the country of nationality to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution".) However their Honours expanded on the meaning of "reasonable" in this proposition:

> *What is "reasonable", in the sense of "practicable", must depend on 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: SZATV (2007) 233 CLR 18 at [24].*

29.2 Gummow, Hayne and Crennan JJ observed that the Refugee Convention "is concerned with persecution in the defined sense, not with living conditions in the broader sense": SZATV (2007) 233 CLR 18 at [25]. Their Honours referred: SZATV (2007) 233 CLR 18 at [25] with approval to two statements from the English decision in Januzi v Secretary of State for Home Department: [2006] 2 AC 426 at 447 (Lord Bingham), 457 (Lord Hope):

> *The thrust of the Refugee Convention is to ensure the fair and equal treatment of refugees in countries of asylum, so as to provide effective protection against persecution for convention reasons.* ***It was not directed (persecution apart) to the level of rights prevailing in the country of nationality.***

And

> *...the question of whether it would be unduly harsh for a claimant to be expected to live in a place of relocation in his country of nationality* ***is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic human rights.***[76]

77. The First Respondent, on that basis, submitted that you do not have to show that relocation is not practicable only for Convention reasons but the test does not require that the place is somewhere where you enjoy the basic norms of human rights.

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[76] First Respondent's Contentions of Facts and Law, page 10 at paragraphs 29.1 and 29.2.

78. The Tribunal both referred to the correct test and applied it. The First Respondent referred to the case of *Minister for Immigration and Citizenship v SZNOJ*[77] and in particular to paragraph [33] of that decision. On that basis, it was submitted that there is a need to relate a person's refugee status back to the persecution for a Convention reason.

79. Relocation and whether it is reasonable is a question of fact. The practicality of relocation is not at large, but is informed by the reasons put by an applicant as to why relocation is impracticable:

> *The Tribunal considered relocation in a framework dictated by the evidence and claims advanced to it by the appellant. It was not obliged to consider all theoretical possibilities including the question of whether or not the appellant would continue to behave in a way which might attract persecution from different Islamic fundamentalists.*
>
> *The test for relocation is whether it is practicable in the particular circumstances of the particular applicant (SZATV v Minister for Immigration and Citizenship (2007) 233 CLR 18 at [24]; and SZFDV v Minister for Immigration and Citizenship (2007) 233 CLR 51). The answer to that question in turn depends upon the framework set by the particular objections raised to relocation: Randhawa 52 FCR 437 at 442–443, especially at 443C-D.*[78]

80. The Tribunal clearly considered the individual circumstances of the Applicant. The Tribunal's decision is informed by its own assessment of the Applicant. In deciding whether relocation is reasonable a broad range of factors are relevant and the Court in *Randhawa* refers to these at page 442.[79] When Black CJ refers to the quotation from Professor Hathaway, he is talking about protection from persecution. The First Respondent submitted (the First Respondent's emphasis):

> *30. Nor is the Applicant's submission supported by Randhawa v Minister for Immigration: (1994) 52 FCR 43.*
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> > *30.1 In that case, Black CJ stated (as accepted by the Tribunal in this case) that the reasonableness of relocation*

[77] *Minister for Immigration and Citizenship v SZNOJ* [2011] FCAFC 85.
[78] *SZMCD v Minister for Immigration and Citizenship and Anor* (2009) 174 FCR 415 at paragraphs 123-124.
[79] *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437.

*must consider a number of practical issues: Randhawa (1994) 52 FCR 437 at 442. These included "**where the quality of internal protection** fails to meet basic norms of civil, political and socio-economic human rights": Ibid, quoting Professor Hathaway. The reference to "internal protection" means protection from persecution of a ground set out in the Refugee Convention: See the discussion by Professor Hathaway set out at (1994) 52 FCR 437 at 441.*

30.2 Accordingly Black CJ was referring to the quality of internal protection from persecution, not the quality of human rights generally.

*32. **Tribunal did consider the individual circumstances of the Applicant:** Third, the Tribunal clearly did consider the individual circumstances of the Applicant, in determining whether relocation was reasonable: Contra Applicant's submissions, para 9.*[80]

81. The First Respondent also submits that the Tribunal did give sufficient consideration to the place or places to where the Applicant could relocate in Pakistan. The First Respondent referred to the discussion of eight different places in Pakistan and to the Tribunal's findings about these.

82. The Tribunal made findings in paragraph 232[81] that it did not accept that the Applicant faced persecution in Peshawar, Islamabad and Rawalpindi. The relevance of identifying the FATA and the NWFP is merely to isolate places or identify places that are clearly out of the question.

83. In relation to the decision of Hayne J in *M13*,[82] the First Respondent submitted that his Honour makes two points about the statement of reasons at paragraph [19]. The decision-maker did not know where the plaintiff came from. The decision-maker did not do a very good job in identifying to where the plaintiff could relocate. The decision-maker did not say anything about how it would be reasonable or practical to live in greater anonymity and it is evident that the particular circumstances of the plaintiff were not considered. "*So much follows*

[80] First Respondent's Contentions of Facts and Law, page 11 at paragraphs 30 and 32.
[81] Court Book at page 280.
[82] *Plaintiff M13/2011 v Minister for Immigration and Citizenship* [2011] HCA 23.

from the delegate not knowing from where the applicant would have to relocate".[83]

84. The First Respondent submitted that it could not be taken that the Tribunal has to identify a particular place; it just has to be satisfied that there **is** a place. In any event the First Respondent submits that the Tribunal did identify both Rawalpindi and Islamabad as places to which the Applicant could relocate.

85. In relation to the Applicant's second ground, the First Respondent submitted that none of the matters referred to by the Applicant are 'relevant considerations' in the required sense. The Court was referred to the case of *Minister for Immigration and Citizenship v MZYHS*[84] and in particular to the decision of Kenny J at paragraph 23 and 24, the Respondent quoting the following:

> *The claims or the integers of the claims are matters the decision-maker is bound to take into account ... By contrast a failure to refer or adequately to consider evidence, whether or not it might be thought probative, does not give rise to jurisdictional error even though it might have led to an erroneous finding of fact.*[85]

86. The First Respondent submitted that the Tribunal did specifically consider whether the Applicant's psychological condition would make it impracticable for him to relocate. The Tribunal also considered whether he would be denied treatment on a Convention-based ground and found that he would not. The availability of mental health treatment in Pakistan generally is not relevant to whether the Applicant is owed protection obligations.

87. The First Respondent referred to the case of *SZCYT v Minister for Immigration*.[86] In that case the Tribunal recognised that the applicant's depressive illness was a serious problem and that he was likely to receive better management of his condition in Australia than India, *"However, this is a humanitarian consideration. The Tribunal's role is limited to determining whether the applicant satisfies the criteria for the grant of a protection visa"*.[87] Buchanan J accepted that the Tribunal

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[83] Ibid at paragraph 22.
[84] *Minister for Immigration and Citizenship v MZYHS* [2011] FCA 53.
[85] Transcript of 14 July 2011, page 53 at lines 37-43.
[86] *SZCYT v Minister for Immigration* [2008] FCA 737.
[87] *SZCYT v Minister for Immigration* [2008] FCA 737 at page 7.

had properly addressed the question of whether relocation was possible in a practical sense.

88. The First Respondent went on to refer to the provisions of s.91R and the definition in s.91R(2)(e) of 'serious harm'. It includes the denial of access to basic services where the denial threatens a person's capacity to subsist. In some cases, basic services may include mental health services but in this case the Tribunal did not think that the Applicant's mental health was such as to prevent him from relocating. In any event, the denial of access to basic services referred to in the Act is denial that occurs as part of persecution on Convention grounds.

89. The First Respondent sought to distinguish the case of *Franco-Buitrago*[88] on the basis that, in that case, the Tribunal had **expressly excluded** consideration of the ill-health of the applicant's son as a consideration. That was not the case here.

90. The First Respondent also submitted, for the same reasons as applied to access to basic services, that the test was not whether the Applicant would have access to basic human rights in the place of relocation. It was also submitted that the Tribunal did give consideration as to whether internal safety was illusory or unpredictable. The Court was referred to paragraph 229 of the Tribunal's decision[89] and to the case of *WAEE v Minister for Immigration*[90] in support of the contention that a finding on a specific issue is subsumed by a finding of greater generality.

91. In relation to the third ground, the First Respondent submits that the *Singh* case[91] is not longer relevant as it considered a ground for review that no longer exists. A series of cases starting with *Minister for Immigration and Multicultural Affairs v Yusuf*[92] stand for the proposition that a breach of s.430 of the Act does not, of itself, establish a jurisdictional error. The cases of *Soudakov*[93] and *Applicant*

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[88] *Franco-Buitrago v Minister for Immigration* [2000] FCA 1525.
[89] Court Book at page 279.
[90] *WAEE v Minister for Immigration* (2003) 75 ALD 630.
[91] *Minister for Immigration and Cultural Affairs v Singh* [2000] FCA 845.
[92] *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323.
[93] *Soudakov v Minister for Immigration and Multicultural Affairs* [2002] FCA 140.

RV[94] were also referred to by the First Respondent in support of that proposition.

92. The First Respondent further submits that *SZLSP* [95]does not support the proposition that a breach of s.430 of itself goes to jurisdiction. What the Court was saying is that jurisdictional error may arise where there has been a failure to put forward any reasons on which it can be established there is a justifiable basis for the decision. The reasons for the decision must be ascertainable from the reasons and findings of the Tribunal.

93. The First Respondent distinguished *SZNZK*[96] on the basis that the decision of the delegate showed that in addressing the claim by person A, the reasons relied on related to the claim of person B. That is the significance of his Honour's comments about the decision being a 'cut and paste'. The issue is, can the reasons be understood from the decision without requiring a 'process of divination'. The question in this case is, can an inference be drawn from the decision that the Tribunal has not given any active intellectual consideration to the Applicant's claims? Despite the quoting of material without attribution and other errors, there is plenty of probative material to support the Tribunal's findings. Mere copying and pasting is not a jurisdictional error.

Applicant's reply

94. In reply, the Applicant submitted that the First Respondent's submission about the correct test to be applied in relocation cases was inconsistent. If paragraph 212[97] is the correct test then the basic rights component of that test cannot be wrong. Secondly, the reference to internal protection cannot mean protection from persecution on a ground set out in the Convention because otherwise the test is a circular one. Basic norms of human rights must include the right not to be discriminated against as well as the right not to be persecuted.

95. In relation to the issue of to where the Applicant could relocate, the Applicant submitted that a positive finding could not be made out of a

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[94] *Applicant RV v Minister for Immigration and Multicultural Affairs* (2001) 113 FCR 204.
[95] *Minister for Immigration v SZLSP* [2010] FCAFC 108.
[96] *SZNZK v Minister for Immigration and Citizenship and Anor* (2010) 115 ALD 332.
[97] Court Book at pages 273-274.

negative one. A finding that the Applicant was not exposed to persecution in Islamabad is not a positive finding that it was reasonable for him to relocate there. If anything, in the paragraphs leading up to and including paragraph 73, the Tribunal refers to significant reasons for finding the opposite. The Applicant also referred to paragraphs 91 to 95 of the decision.[98]

96. Further on the issue of the reasonableness of relocation the Applicant submits that it is unclear as to what the Tribunal found in that respect. There is no reference at any point to the Applicant being a suicide risk. On the conclusion that he could relocate because he had moved to Australia, the Applicant submitted that the Tribunal is required to take into account what is known at the time of the hearing in relation to his mental health – a significant time after he left Pakistan.

97. The Applicant pointed out that *SZCYT*[99] can be distinguished because the mental health claim related to the claim for refugee status and not to the reasonableness of relocation. Section 91R of the Act is also concerned with establishing a refugee claim and not with relocation. On the issue of s.430 of the Act, the Applicant pointed out that *Yusuf*[100] was concerned with s.430(1)(c) and not s.430(1)(d) and referred to paragraphs 54 and 99 of *SZLSP*[101] in relation to that issue. Section 430(1)(d) requires the Tribunal to refer to relevant materials. While it has purported to go through that exercise it has not done so.

Conclusions

98. Grounds 1 and 2 of the Applicant's grounds for review deal with the way in which the Tribunal approached the issue of the ability of the Applicant to relocate within Pakistan. Ground 3 relates to the issue of whether the Tribunal fulfilled the requirements of s.430 of the Act and in particular s.430(1)(d).

99. Before addressing the specific grounds it is worth making some observations about the decision itself. It is quite a long decision although significant parts of it are repetitive and as the Applicant has pointed out, at least 100 of 236 paragraphs in the decision are not

[98] Court Book at pages 239-240.
[99] *SZCYT v Minister for Immigration* [2008] FCA 737.
[100] *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323.
[101] *Minister for Immigration and Citizenship v SZLSP* [2010] FCAFC 108.

original. The First Respondent points out that there is no error in copying brief general statements of principle from earlier Tribunal decisions and not all material must be original. Nevertheless where large slabs of material are copied from other, not always attributed sources, it may be more difficult to see the reasoning process which connects that material to the findings of the Tribunal.

100. Indeed it is not always easy to ascertain what are the 'findings' of the Tribunal in this case. This is particularly so in relation to two critical issues before the Court: the conclusion about the ability of the Applicant to relocate to a part of the country in which protection is available and what, precisely, the Tribunal considered under the label of the Applicant's psychological difficulties.

101. The evidence before the Tribunal concerning parts of the country where protection might be available to the Applicant consisted of the material he supplied either in his own evidence or by way of Country Information and the Country Information, some of which is unattributed, but much of which came from Refugee Review Tribunal Country Advices, which is reproduced by the Tribunal.

102. At paragraph 87 of the decision,[102] the Tribunal notes that it was suggested to the Applicant that in Islamabad, as the city where the government is based, there would be less risk of being targeted by the Taliban and others. The Applicant responded by referring to the recent death of the Punjab governor and to the fact that many people including scholars and doctors were under house arrest and that there are bomb attacks in Islamabad.

103. At paragraph 89[103] the Tribunal referred to Country Information which indicates that Rawalpindi-Islamabad was home to a number of Pashtuns. The Applicant responded that Turi Pashtuns are targeted on the basis of their activism in Parachinar and their religion; also that Rawalpindi–Islamabad was very close to the Kurram Agency and that there would be a lot of displaced Sunnis from Parachinar there.

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[102] Court Book at page 238.
[103] Court Book at page 238.

104. At paragraph 91[104] the Tribunal again put to the Applicant that there was Country Information which suggested that he could find reasonable safety in Rawalpindi-Islamabad. The Applicant stated that non-Turi Shi'ites were not at great risk but Turi Shi'ites were at risk from Sunnis displaced from Parachinar. The Tribunal went on to discuss with the Applicant his experiences in Rawalpindi–Islamabad.

105. In paragraphs 102 to 116[105] the Tribunal deals with "General Information: Sunni and Shia". Paragraph 105[106] notes no specific discrimination against Shi's people in relation to employment or education was reported in 2008. Paragraph 106[107] notes that sectarian violence between Sunni and Shi'a Muslims has been a very long-standing security issue in many parts of Pakistan. Paragraph 107 notes that *[c]hronic levels of religiously-motivated violence, much of it committed against the Shia minority by Sunni extremists, continue throughout the country".*[108] Paragraph 108[109] refers to a report from 2008 of a spate of suicide attacks on Rawalpindi and Lahore. Paragraph 109 notes that *"[p]olice often refused to prevent violence and harassment or refused to charge persons who committed such offences".*[110] Paragraph 113 notes:

> *There were in September 2010 attacks on Shia followers in which around 100 people were killed in Quetta and at a procession in Lahore, and there was a bombing at an Imam Birga in Sarghoda in Punjab on 18 July in which three people were killed and twenty injured.*[111]

106. Under the heading *"State protection: outside FATA"*, the Tribunal notes:

> *Outside of the FATA, the police in Pakistan have the primary responsibility for internal security in most other areas of the country. The US Department of State writes that the effectiveness of the Pakistan police force varies "greatly by district, ranging from reasonably good to ineffective". US Department of State*

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[104] Court Book at page 239.
[105] Court Book at pages 240-245.
[106] Court Book at page 241.
[107] Court Book at page 241.
[108] Court Book at page 242.
[109] Court Book at page 242.
[110] Court Book at page 242.
[111] Court Book at page 244.

2010, Country Reports on Human Rights Practices for 2009 – Pakistan, March, Section 1(d). However, a July 2008 International Crisis Group report states that Pakistan's police force is "incapable of combating crime, upholding the law or protecting citizens and the state against militant violence". International Crisis Group 2008, Reforming Pakistan's Police, Asia Report. Another report indicates that although notoriously corrupt, Pakistan's police force had "gathered vital intelligence on militant plots and captured key Taliban leaders in the past". Humayan, A. 2010, Saving Pakistan's Heartland, 8 February.

The inadequate response of the Government of Pakistan to terrorism and extremism has been criticised (see for example Ahmed Rashid's article in The National Interest).[112]

107. Under the heading *"Relocating to another part of Pakistan"* the Tribunal states at paragraph 152:

> *There is currently considerable debate as to whether Karachi represents a safe haven for Pashtuns fleeing harm in the NWFP, Baluchistan and FATA. In a June 2010 report for the US Congress it states that "[e]xtremists …appear to be moving from the FATA to the Sindh province capital of Karachi in large numbers in recent months, exacerbating pre-existing ethnic tensions and perhaps forming a new Taliban safe haven in Pakistan's largest city",*[113]

and paragraph 172 again, refers to Karachi.[114]

108. At paragraph 157, the Tribunal refers to Islamabad and the identification of Shi'a from Parachinar.

> *In relation to another case, the Department sought advice from the Australian High Commission in Islamabad on a claim that a Shia from Parachinar in Kurram Agency was required to show his ID card to Taliban and Sunni Muslims while living in Peshawar and Islamabad. The post advised that security concerns meant that security personnel (civil and military) frequently requested commuters to produce identification and that the practice 'varies over time and location'. 'People moving between*

[112] Court Book, pages 251-252, at paragraphs 138-139.
[113] Court Book at page 255.
[114] Court Book at page 261.

tribal and settled areas are required to produce identification and are body searched'.[115]

109. The Tribunal deals with Islamabad again at paragraph 184:

> *As the seat of national government and army GHQ respectively, the two cities have witnessed a large number of terrorist attacks and assassinations in recent years, most recently the assassination of the Chief Minister of the Punjab, Salman Taseer, on 4 January 2011. Taseer was murdered by his body guard due the minister's vocal opposition to Pakistan's blasphemy law, which has been used by Sunnis to target Shi'ites, Ahmadis and Christians. Punjab Governor Salman Taseer assassinated in Islamabad' 2011, BBC News, 4 January. However, no sources have been located that describe targeted killings of Shi'ites in Islamabad and Rawalpindi in recent years.*[116]

110. The Tribunal deals with Lahore at paragraph 186:

> *Despite its status as the second largest city in Pakistan, Lahore was not examined as a viable site for safe relocation for Turi and other Shi'ite Pashtuns on the basis that it only has a very small Pashto speaking community compared to other major centres throughout Pakistan. Lahore does, however, contain a substantial Shia population and therefore it might still constitute a viable site for relocation for Punjabi, Urdu or English speaking Shi'ites.*[117]

111. The Tribunal deals with Quetta at paragraph 181:

> *Quetta, the capital of Baluchistan, is home to both a large Pashtun population and a large Shi'ite community. Over the past decade Quetta has become one of the most dangerous cities in South Asia for Shi'ites and subsequently it does not constitute a safe haven for Pashtun Shi'ites.*[118]

112. The Tribunal's conclusions about the capacity of the Applicant to relocate to an area of the country where protection is available from persecution on the grounds of his religion is contained at paragraph 214:

> *He is Shia and Independent information indicates that some 20 per cent of Pakistan's Muslims are Shia – there are between 17*

[115] Court Book at pages 256-257.
[116] Court Book at page 264.
[117] Ibid.
[118] Court Book at pages 263-264.

and 26 million Shia followers in the country and there have been attacks on prominent Shia people, on mosques and on Shia processions over many years both inside and outside FATA and the NWFP. It also indicates that the Pakistan government and its police and security agencies have failed to provide protection against sectarian violence. There will be further attacks against Shia targets. However, in the Tribunal's view, the chance that the applicant would happen be at one of the thousands of Shia mosques where there is such an attack, is remote.[119]

113. If the previous parts quoted, apart from those involving the evidence of the Applicant, are 'findings' it is hard to see the link between those findings and the conclusions in paragraph 214.[120] This is particularly the case where a substantial part of the paragraph is taken from another Refugee Review Tribunal decision.

114. That decision contains the following statement:

The Tribunal has considered information which points to a failure on the part of the Pakistan government and its police and security agencies to effectively wipe out sectarian violence. Police corruption is widespread and police effectiveness varies from place to place.

There will doubtless be further attacks against Shia targets as there have been for a long time but in the Tribunal's assessment the chance that the applicant would be at one of the thousands of Shia mosques where there was such an attack, and so seriously harmed, is remote.[121]

115. These paragraphs appear after a discussion of the capacity of the applicant in that matter to practice his religion as a Shi'a elsewhere in Pakistan. This is discussed in the context of Country Information about particular incidents of attacks on Shi'a mosques.

116. The fact that the Tribunal makes no specific finding in paragraph 214[122] in relation to any of the locations about which material has been extracted and instead repeats the conclusions of another member in another matter gives rise to an inference that the member did not consider the material actually before him in reaching his conclusions.

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[119] Court Book at page 274.
[120] Ibid.
[121] RRT Statement of Decision and Reasons, Case No. 1007771.
[122] Court book at page 274.

117. The Tribunal goes on to repeat at paragraphs 220 to 226[123] the Applicant's evidence of his experience in other parts of Pakistan and considered that his experiences while *"unpleasant and intimidating"* did not *"constitute persecution"*.[124]

118. The Tribunal then goes on to say at paragraph 227:

> *Whilst it is not necessary for an applicant to prove past persecution, the lack of cogent evidence from him of persecution outside FATA and NWFP combined with the country information leads the Tribunal to conclude that there is not a real chance of persecution being directed at the applicant outside FATA and NWFP for the claimed convention reasons.*[125]

119. A similar statement is then made at paragraph 229:

> *In summary, the Tribunal considers that there is not more than a remote chance that the applicant would face persecution on account of his religion, his race (ethnicity), his political opinion or his membership of the particular social groups raised in the application if he were to return to live elsewhere in Pakistan, away from the FATA and NWFP.*[126]

120. A slightly different assessment is made in paragraph 232:

> *The Tribunal nevertheless considers that the Country information cited above indicates that whilst some cities such as Karachi would not be viable given the similar dangers of Convention related persecution and Lahore is perhaps not as viable as there is no established Pashtun community, there is no evidence to indicate that other parts of Pakistan could not be reasonably accessed by the applicant,*[127]

although this seems to ignore the Country Information with respect to Quetta.

121. In paragraph 234 the same finding appears to be repeated twice:

> *The Tribunal finds that the applicant could reasonably relocate to other parts of Pakistan without more than a remote chance of being targeted for any (or any combination) of the Convention*

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[123] Court Book at pages 275-279.
[124] Court Book at page 278.
[125] Court Book at page 279.
[126] Ibid.
[127] Court Book at page 280.

> *reasons pleaded including his Shia religion, his Turi ethnicity, actual and imputed political opinions and membership of several particular social groups. The Tribunal further finds that the applicant could reasonably relocate to other parts of Pakistan without more than a remote chance of being targeted for the combination of any or all of the Convention reasons pleaded including his Turi ethnicity, actual and imputed political opinions and membership of several particular social groups.*[128]

122. Finally, under the heading *"Conclusions"*, the Tribunal states (original emphasis):

> *. . . with the possible exception of Karachi, the Tribunal does not accept that the applicant has a well-founded fear of being* ***targeted*** *for* ***serious harm for a Convention reason*** *if he returns to an area of Pakistan* ***outside FATA or NWFP****.*[129]

123. The conclusions say nothing about the capacity of the Applicant to relocate to such areas.

124. The second area where the findings of the Tribunal are unclear relate to the medical evidence. At paragraphs 189 to 193,[130] the Tribunal deals with the reports by Dr Linton, Dr Firestone and Mr Bromhead. Paragraphs 190, 191 and 192[131] are selected quotes from those reports. After appearing in paragraph 193 to cast some doubt on the value of the reports, the Tribunal concludes that nonetheless it *"gives weight to the reports and finds that the applicant suffers from the disorders referred to therein"*.[132]

125. It is not clear however, what the Tribunal does accept from these reports and what weight it gives to them. In particular, the member does not refer to Dr Linton's assessment that the Applicant's psychological symptoms have amplified since he has been to Australia, that his psychological state was deteriorating as time progressed, that his mental state was *"very precarious"*[133] or that Dr Linton considered the Applicant to be a *"suicide risk"*.[134]

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[128] Court Book at pages 280-281.
[129] Court Book, page 281 at paragraph 235.
[130] Court Book, pages 265-266.
[131] Court Book at page 265.
[132] Court Book at page 266.
[133] Court Book at page 154.
[134] Court Book at page 111; page 154.

126. The vagueness of the Tribunal's finding on this issue make it hard to assess what the member did consider when dealing with whether the Applicant's psychological problems would make it unreasonable for him to relocate.

Relocation

127. The Tribunal referred in its decision to *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs*[135] and there is no dispute that the judgment of Black CJ in that matter sets out the approach to determining the issue of reasonableness of relocation followed by the Courts in subsequent decisions.

128. His Honour put the issue this way:

> *In the present case the delegate correctly asked whether the appellant's fear was well-founded in relation to his country of nationality, not simply the region in which he lived. Given the humanitarian aims of the Convention this question was not to be approached in a narrow way and in her further analysis the delegate correctly went on to ask not merely whether the appellant could relocate to another area of India but whether he could reasonably be expected to do so.*
>
> *This further question is an important one because notwithstanding that real protection from persecution may be available elsewhere within the country of nationality, a person's fear of persecution in relation to that country will remain well-founded with respect to the country as a whole if, as a practical matter, the part of the country in which protection is available is not reasonably accessible to that person. In the context of refugee law the practical realities facing a person who claims to be a refugee must be carefully considered.*
>
> *Moreover, the range of the realities that may need to be considered on the issue of the reasonableness of relocation extends beyond physical or financial barriers preventing an applicant for refugee status from reaching safety within the country of nationality and easily extends to circumstances such as those present in R v Immigration Appeal Tribunal; Ex parte Jonah [1985] Imm AR 7. Professor Hathaway, op cit at p 134, expresses the position thus:*

[135] *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437.

> *"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"[Original emphasis].*[136]

129. In my view, that approach requires the decision-maker to consider three things:

- Does the Applicant have a well-founded fear of persecution for a Convention reason?
- If yes, is real protection from persecution available elsewhere within the country of nationality?
- Given the particular circumstances of the Applicant and the impact upon him of relocation, is it reasonable to expect him to relocate?

130. The Tribunal correctly states the approach at paragraph 212.[137] The member spends paragraphs 214 to 229[138] dealing with the issue of whether real protection from persecution was available to the Applicant elsewhere in Pakistan and one paragraph apparently dealing with the reasonableness of expecting the Applicant to relocate. In two sentences the Tribunal deals with what the Tribunal refers to as the Applicant's 'psychological difficulties'. While the intent is not entirely clear, the consideration of the Applicant's mental health appears to be limited to consideration of whether he would be denied treatment for his psychological conditions on account of his religion, tribe or other Convention characteristic or would be unable to find accommodation or employment.

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[136] *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 442.
[137] Court Book at pages 273-274.
[138] Court Book at pages 274-279.

131. Whether it is 'reasonable', as in practicable, for a person to relocate to an area where they would be protected from persecution for a Convention reason can only involve a consideration of factors which are not the Applicant's Convention characteristics. It could never be reasonable for a person to relocate to an area where they would be exposed to persecution for a Convention reason.

132. In *SZATV*,[139] Kirby J after reviewing the literature proposed the following:

> *A review of the literature suggests that this conclusion will not invariably follow, either as a matter of fact or law. Thus, internal relocation will not be a reasonable option if there are logistical or safety impediments to gaining access to the separate part of national territory that is suggested as a safe haven: (European Council on Refugees and Exiles, Research Paper, pp 8-9). Nor if the evidence indicates that there are other and different risks in the propounded place of internal relocation: (The Michigan Guidelines on the Internal Protection Alternative, agreed to at the First Colloquium on Challenges in International Refugee Law, 9-11 April 1999, para [13].); or where safety could only be procured by going underground or into hiding: (Hathaway and Foster, pp 384-385); or where the place would not be accessible on the basis of the applicant's travel documents or the requirements imposed for internal relocation: (Hathaway and Foster, p 391.)*
>
> *An inability or unwillingness on the part of the national authorities to provide protection in one part of the country may make it difficult to demonstrate durable safety in another part of that country: (Hathaway and Foster, p 383.). In some circumstances, having regard to the age of the applicant, the absence of family networks or other local support, the hypothesis of internal relocation may prove unreasonable: (Hathaway and Foster, pp 386-387.). In each case, the personal circumstances of the applicant: (UNHCR, Guidelines, p 6 [25].); the viability of the propounded place of internal relocation: (European Council on Refugees and Exiles, Research Paper, pp 12 [8.1], 52); and the support mechanisms available if an applicant has already been traumatised by actual or feared persecution: (UNHCR, Guidelines, p.6 [26]), will need to be weighed in judging the realism of the hypothesis of internal relocation.*[140]

[139] *SZTAV v Minister for Immigration* [2007] 233 CLR 18
[140] *SZTAV v Minister for Immigration* [2007] 233 CLR 18 at pages 42-43.

133. In *Perampalam*, Burchett and Lee JJ stated

> *It cannot be reasonable to expect a refugee to avoid persecution by moving into an area of grave danger, whether the danger arises from a natural disaster (for example, a volcanic eruption), a civil war or some other cause.*[141]

134. Their Honours went on to cite the case of *Reg v Immigration Appeal Tribunal; Ex parte Jonah*[142] where a refugee was not required to accept internal refuge by going to a remote and primitive part of his country.

135. In *Franco-Buitrago*,[143] Tamberlin J stated the following:

> *The question of whether safe internal relocation is reasonably available is, of course, one of fact for determination by the RRT. However, in reaching a conclusion on this question the RRT must not fall into an error of law by excluding from consideration matters which are central to a determination of that issue. The reasoning in Randhawa makes it clear that the circumstances to be taken into account are wide ranging, with strong emphasis on the practical realities of an applicant's position such that the cultural problems of relocation can be taken into account. In the present case the issue of Juan's health was specifically raised by the applicant as a matter for consideration. The medical condition of the child could reasonably be considered to bear on the question whether relocation is reasonable, or feasible in a practical sense. For example, it may be considered that it is not reasonable to expect the family to relocate in a "safe area" remote from those medical and hospital services and facilities for Juan which are normally found in a large city. The need for medical treatment for the child may also require the parents to visit Pereira where they could experience a real danger of persecution. These practical considerations arising from the child's predicament could limit the number and type of places suitable for relocation and carry weight in determining the question whether relocation in the country is reasonable in the circumstances of any particular case.*[144]

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[141] *Perampalam v Minister for Immigration and Multicultural Affairs* [1999] FCA 165 at paragraph 19.
[142] *Reg v Immigration Appeal Tribunal; Ex parte Jonah* [1985] Imm Ar 7.
[143] *Franco-Buitrago v Minister for Immigration and Multicultural Affairs* [2000] FCA 1525. [2000] FCA 1525
[144] *Franco-Buitrago v Minister for Immigration and Multicultural Affairs* [2000] FCA 1525. [2000] FCA 1525 at [17].

136. And in *NAIZ v Minister for Immigration and Multicultural Affairs and Indigenous Affairs*,[145] the failure of the Tribunal to explore the significance of a 55-year old unemployed widow having no one in Fiji to look after her caused Branson J to conclude that the Tribunal did not apply the right test when it considered that it was satisfied that the applicant would be able to relocate within Fiji.

137. The Tribunal is required to consider the practical realities facing a person in determining whether it is reasonable to expect them to relocate. Those practical realities are not limited to matters related to persecution for a Convention reason:

> *A well founded fear of persecution for a Convention reason having been shown, a refugee does not also have to show a Convention reason behind every difficulty or danger which makes some suggestion of relocation unreasonable.*[146]

138. The issue is not whether the Applicant might be denied treatment for his mental illness for a Convention reason but whether he could relocate within Pakistan and maintain himself given the state of his health. As Branson J said in *NAIZ*, the approach set down in *Randhawa* requires the Tribunal to consider the practical realities facing the Applicant to consider how, in a practical sense, he could reasonably be expected to relocate.[147]

139. The Tribunal refers to the Applicant being tertiary-educated, a speaker of Urdo, Pashto and English and someone who has demonstrated the adaptability of moving to Australia and studying here. While all of those facts are true they ignore the material before the Tribunal that the Applicant was also a person who was "*suffering from severe depression and severe post-dramatic* (sic) *stress disorder*"[148] and if Dr Linton's report is accepted, whose mental state had deteriorated over time and who was a suicide risk.

140. The Applicant was not just an English-speaking, tertiary-educated and 'adaptable' person but one who was suffering from severe depression and severe post-traumatic stress disorder whose mental health was very

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[145] *NAIZ v Minister for Immigration and Multicultural Affairs and Indigenous Affairs* [2005] FCAFC 37.
[146] *Perampalam v Minister for Immigration and Multicultural Affairs* [1999] FCA 165 at [19].
[147] [2005] FCAFC 37 at [22].
[148] Court Book, page 265 at paragraph 190.

precarious and who might not have any family or community support elsewhere in Pakistan. That is the person who the Tribunal had to consider could reasonably be expected to relocate.

141. It is not clear on what basis the Tribunal concluded that the Applicant would not be denied treatment for his psychological conditions but Country Information to the effect that there was one psychiatrist for every 10,000 people in Pakistan was available to the Tribunal and would suggest, at the very least, some practical difficulty in accessing such treatment.

142. I am not satisfied that the Tribunal did ask the right questions and did apply the right approach, despite referring to it, in considering if was reasonable in all the circumstances to expect the Applicant to relocate.

143. The application has therefore established an error on the part of the Tribunal.

144. Having reached that conclusion I do not consider it necessary to deal with what the Applicant referred to as the more lenient test, that is, whether it was possible for him to relocate within Pakistan to a place where the basic norms of civil, political and socioeconomic human rights would be available to him. The joint judgment of Gummow, Hayne and Crennan JJ in *SZATV*[149] suggests that they accept that the Convention is not concerned with living conditions in the broader sense; however the particular circumstances of the refugee and the impact on them of relocation may mean that certain conditions may have a disproportionate effect on the individual because of their particular characteristics. Their Honours also suggest that the provisions of s.91R do not provide any guidance in this respect.[150]

145. I also do not consider it necessary to deal with the issue of whether an assessment that a person would be safe from a well-founded fear of persecution 'anywhere but' a particular location is sufficient to identify a place to where they could safely relocate.

146. The Applicant in ground three relied on a failure by the Tribunal to comply with the provisions of s.430(1)(d) of the Act. The Applicant

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[149] *SZATV v Minister for Immigration and Citizenship* (2007) 233 CLR 18.
[150] Ibid at paragraph 12.

relied on the judgments of Kenny and Rares JJ in *Minister for Immigration and Citizenship v SZLSP*[151] to submit that a failure to comply with the provisions of s.430(1)(d) was in itself a jurisdictional error and sought to distinguish *Minister for Immigration and Multicultural Affairs v Yusuf*[152] on the basis that that case dealt with s.430(1)(c).

147. I am not satisfied that Kenny J goes as far as the Applicant contends. What Kenny J does say is that the purpose of s.430 of the Act is to ensure that an aggrieved party can identify with 'certainty' why the Tribunal decided as it did, and that a reviewing court is informed of the same thing. A failure by the Tribunal to refer to material on which it based its findings may give rise to an inference that the Tribunal's decision was not based on findings or inferences of fact grounded upon probative material and logical grounds.

148. In this case, the Tribunal has gone far beyond copying brief general statements of principle from earlier Tribunal decisions. A large part of the crucial material described by the First Respondent as 'findings' is unattributed material and the conclusions on a key issue are directly copied from an unrelated decision by another member. In addition, the findings in relation to the reasonableness of relocation make statements for which no material is cited and fail to address the actual circumstances of the Applicant. The Court cannot be satisfied that the decision is logically based on probative material.

[151] [2010] FCAFC 108.
[152] *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323.

149. The application is therefore granted.

I certify that the preceding one hundred and forty-nine (149) paragraphs are a true copy of the reasons for judgment of Whelan FM

Date: 17 November 2011