FEDERAL MAGISTRATES COURT OF AUSTRALIA

SZFTD v MINISTER FOR IMMIGRATION & ANOR [2007] FMCA 1930

MIGRATION – Whether the power to reconstitute a Tribunal can be exercised under s.421 of the Act – whether referring to that section in an instrument invalidates the constitution of the Tribunal – whether the Tribunal is required to give an applicant the opportunity to respond to doubts the Tribunal holds about evidence provided to it after the hearing.

Migration Act 1958 (Cth), ss.91R(3), 420, 421, 422, 422A, 425, 474
Acts Interpretation Act 1901 (Cth), ss.13, 33(3)

Lee v Minister for Immigration and Multicultural and Indigenous Affairs [2005] FCA 464
Minister for Immigration and Multicultural Affairs v Wang [2003] HCA 11
McLean Bros & Rigg Ltd v Grice [1906] HCA 1
Knox County v Ninth National Bank (1893) 147 US 91
Edwards v Commonwealth Bank of Australia (1997) 73 IR 409
Minister for Natural Resources v New South Wales Aboriginal Land Council (1987) 9 NSWLR 154
M'Gahey v Alston & Sewell (1836) 2 M & W 206
R v Brewer (1942) 66 CLR 535
Hardess v Beaumont [1953] VLR 315
Pearce v City of Coburg [1973] VR 583
Attorney-General for the Northern Territory v Minister for Aboriginal Affairs (1986) 67 ALR 282
Dawson v Westpac Banking Corporation (1991) 66 ALJR 94
Australian Securities Commission v Fairlie (1993) 11 ACLC 669
Re NIAA Corporation Ltd (in liq) (1993) 12 ACSR 141
Re Bladen [1952] VLR 82
Mallock v Tabak [1977] VR 78
Smith v Smith (1985) 80 FLR 444
Perlt v Kahl (1976) 13 SASR 433
Carpenter v Carpenter Grazing Co Pty Ltd (1987) 5 ACLC 506
Gosford Christian School Ltd & Anor v Totonjian & Ors [2006] NSWSC 725
Harris v Knight (1890) LR 15 PD 170
NABE v Minister for Immigration and Multicultural and Indigenous Affairs (No 2) (2004) 219 ALR 27
Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002 (2003) 198 ALR 59
SZBYR v Minister for Immigration and Citizenship [2007] HCA 26
SZGQZ v Minister for Immigration and Citizenship [2007] FCA 1091

SZJJU v Minister for Immigration and Citizenship [2007] FCA 726
SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs [2006] HCA 63
F Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry [1975] AC 295
Minister for Immigration and Citizenship v Applicant A125 of 2003 [2007] FCAFC 162
SZILQ v Minister for Immigration and Citizenship [2007] FCA 942

Applicant:	SZFTD
First Respondent:	MINISTER FOR IMMIGRATION & CITIZENSHIP
Second Respondent:	REFUGEE REVIEW TRIBUNAL
File number:	SYG 1659 of 2007
Judgment of:	Turner FM
Hearing date:	24 October 2007
Date of last submission:	24 October 2007
Delivered at:	Sydney
Delivered on:	6 December 2007

REPRESENTATION

Solicitors for the Applicant:	Mr R. Turner of Parish Patience
Counsel for the Respondents:	Ms T. Wong
Solicitors for the Respondents:	Ms S. Zarucki of Clayton Utz

ORDERS

(1) The application and amended application are dismissed.

FEDERAL MAGISTRATES COURT OF AUSTRALIA AT SYDNEY

SYG 1659 of 2007

SZFTD
Applicant

And

MINISTER FOR IMMIGRATION & CITIZENSHIP
First Respondent

REFUGEE REVIEW TRIBUNAL
Second Respondent

REASONS FOR JUDGMENT

1. This is an application for an order to show cause why a remedy should not be granted in respect of a decision of the Refugee Review Tribunal ("the Tribunal") signed on 20 April 2007, which affirmed the decision of the delegate for the Minister for Immigration and Multicultural Affairs not to grant the applicant a protection visa.

Background

2. On 7 May 2004 the applicant applied to the Department of Immigration and Multicultural Affairs for a protection visa. In this application he claimed to fear persecution in Nepal because his lower caste made him the subject of caste-based discrimination and harassment. The applicant claimed that he had received death threats from Maoists after he refused to join their activities, and that despite this, he has been identified as an anti-monarchist and is now wanted by the police (Court Book "CB" 24-27).

3. The application was refused by a delegate of the first respondent on 3 August 2004 (CB 34) and by the Tribunal on review on 28 December 2004 (CB 53). An application for judicial review was subsequently filed with this Court, and on 20 December 2006, Nicholls FM remitted the matter to the Tribunal to be determined according to law (CB 79). By decision signed on 20 April 2007, the Tribunal affirmed the decision of the delegate not to grant the applicant a protection visa (CB 115).

4. The matter is now before this Court pursuant to an application for judicial review filed on 25 May 2007, and an amended application filed on 17 October 2007.

Issues for determination

5. The issues before the Court are as follows:

- Whether the direction that James Silva constitute the Tribunal for the purpose of the review was valid;
- Whether the Tribunal applied the wrong test and required the applicant to demonstrate that he had been targeted personally;
- Whether the Tribunal was required to provide the applicant with an opportunity to respond to concerns it had about evidence provided to it after the conclusion of the hearing.

The application

6. The applicant set out three grounds as follows:

(1) Failure to consider the content of my wife's letter.

(2) Failure to consider the geographic aspect of my claim.

(3) Failure to understand my position in context of politics.

7. The applicant set out the following three grounds in his amended application:

(1) The Tribunal lacked the authority to make the decision.

Particulars

(a) The Principal Member of the Tribunal failed to re-constitute the Tribunal in accordance with the Migration Act 1958 s.425.

(2) The Tribunal applied the wrong test.

Particulars

(a) The Tribunal failed to consider whether the applicant was targeted as a member of a group rather than as an individual.

(b) The Tribunal failed to consider the applicant's evidence cumulatively.

(3) The Tribunal denied the applicant procedural fairness.

Particulars

(a) The credibility of the letter from the applicant's wife was an issue arising in relation to the application under review. The Tribunal failed to give the applicant a real opportunity to give evidence and present arguments in relation to it.

Findings of the Court in relation to the grounds in the application

8. Ground one alleges a failure to consider the contents of a letter from the applicant's wife. That assertion is incorrect; the Tribunal considered the letter at CB 127.10 and in detail at CB 139.2. The Tribunal placed little weight on the assertions in the letter and set out its reasons for that. As stated by the Federal Court of Australia in *Lee v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] FCA 464 at [27]:

> *The Tribunal is entitled to accept or reject or give such weight to the evidence proffered as it thinks appropriate in all the circumstances.*

Ground one is rejected.

9. Ground two alleges a failure to consider the geographic aspect of the applicant's claim. No particulars have been given of this ground and no

submissions have been made in support of it. The Tribunal set out its synopsis of the applicant's claims and considered all aspects of them in detail (CB 133.2-140). It has not been shown that the Tribunal failed to deal with any aspect of the applicant's claims. Ground two is rejected.

10. Ground three alleges a failure to understand the applicant's position "*in [the] context of politics"*. The Tribunal gave extensive consideration to the applicant's involvement in politics (CB 124.3-126.2, 134.6-136.6, 137.6, 139.9). The Tribunal considered the applicant's claims carefully and in detail, and set out its reasons for not accepting much of them. It is a matter for the Tribunal which evidence it accepts or rejects: *Lee* (ante). It has not been shown that the Tribunal failed to understand the applicant's claim "*in [the] context of politics"*. Ground three is rejected.

Findings of the Court in relation to the grounds in the amended application

Ground one

11. Ground one asserts that the Tribunal lacked authority to make the decision. The applicant's 'Outline of Submissions' states that the second Tribunal was constituted differently from the first Tribunal and that

> *There is no evidence before the Court that the procedures required by the Act ss.422 & 422A have been followed. The Applicant, therefore, submits that the procedures were not followed and the Tribunal was not lawfully constituted and lacked the authority to make the decision.*

12. A printout was tendered on behalf of the applicant that shows that s.421 of the *Migration Act 1958* (Cth) ("the Act") is referred to as the section pursuant to which the Tribunal was constituted on 30 January 2007 for the purposes of the review (Exhibit A1). It is argued for the applicant that s.421 is the "wrong power" to use to reconstitute the Tribunal. The relevant sections provide:

> ***420 Refugee Review Tribunal's way of operating***

(1) The Tribunal, in carrying out its functions under this Act, is to pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

(2) The Tribunal, in reviewing a decision:

(a) is not bound by technicalities, legal forms or rules of evidence; and

(b) must act according to substantial justice and the merits of the case.

421 Constitution of Refugee Review Tribunal for exercise of powers

(1) For the purpose of a particular review, the Tribunal is to be constituted, in accordance with a direction under subsection (2), by a single member.

(2) The Principal Member may give a written direction about who is to constitute the Tribunal for the purpose of a particular review.

422 Reconstitution of Refugee Review Tribunal–unavailability of member

(1) If the member who constitutes the Tribunal for the purposes of a particular review:

(a) stops being a member; or

(b) for any reason, is not available for the purpose of the review at the place where the review is being conducted;

the Principal Member must direct another member to constitute the Tribunal for the purpose of finishing the review.

(2) If a direction is given, the Tribunal as constituted in accordance with the direction is to continue to finish the review and may, for that purpose, have regard to any record of the proceedings of the review made by the Tribunal as previously constituted.

(3) In exercising powers under this section, the Principal Member must have regard to the objective set out in subsection 420(1).

422A Reconstitution of Tribunal for efficient conduct of review

(1) The Principal Member may direct that:

(a) the member constituting the Tribunal for a particular review be removed; and

(b) another member constitute the Tribunal for the purposes of that review;

if the Principal Member thinks the reconstitution is in the interests of achieving the efficient conduct of the review in accordance with the objective set out in subsection 420(1).

(2) However, the Principal Member must not give such a direction unless:

(a) the Tribunal's decision on the review has not been recorded in writing or given orally; and

(b) the Principal Member has consulted:

(i) the member constituting the Tribunal; and

(ii) a Senior Member who is not the member constituting the Tribunal; and

(c) either:

(i) the Principal Member is satisfied that there is insufficient material before the Tribunal for the Tribunal to reach a decision on the review; or

(ii) a period equal to or longer than the period prescribed for the purposes of this subparagraph has elapsed since the Tribunal was constituted.

(3) If a direction under this section is given, the member constituting the Tribunal in accordance with the direction is to continue and finish the review and may, for that purpose, have regard to any record of the proceedings of the review made by the member who previously constituted the Tribunal.

13. Section 421 is a general power for the Principle Member to direct who is to constitute the Tribunal for the purpose of a particular review. The heading of s.422 (which is deemed to be part of the Act – refer s.13 of the *Acts Interpretation Act 1901* (Cth)) is "Reconstitution of the

Refugee Review Tribunal – unavailability of member". It is argued that s.422 is a specific power for reconstitution of the Tribunal, as distinct from the general power in s.421 to "constitute" the Tribunal. When s.422 is examined it is clear that the power provided is to "constitute" the Tribunal in the circumstances provided. Each of ss.421, 422 and 422A are powers for the Principle Member to give a direction as to who is to constitute the Tribunal for the purpose of a review.

14. Also, although the heading of s.422A refers to "Reconstitution of Tribunal...", its terms provide that *"the Principle Member may direct that...another member constitute the Tribunal for the purposes of that review"*. It is not determinative of the question of the validity of the direction in Exhibit A1 that the form refers to the general power in s.421, and not the specific powers in ss.422 and 422A. The position is that the Principle Member had the power to give the direction as to who would constitute the Tribunal for the purpose of the particular review. That power was exercised. Even if an error was made by referring to s.421 in the form, that does not mean that the power to issue a direction as to who is to constitute the Tribunal has not been validly exercised. At most, it means that the form (Exhibit A1) has not been filled in accurately. The direction of who was to constitute the Tribunal was made: for that direction to be valid, it is not necessary that a particular section be specified on the form. The Principle Member had the power to constitute and reconstitute – that power was exercised. It is not crucial which section the form refers to. The fact is, the Principle Member was exercising his power to direct who was to constitute the Tribunal for the purpose of the review. Nothing was done that was beyond power. The direction to constitute the Tribunal is valid.

15. The applicant referred to the decision in *Minister for Immigration and Multicultural Affairs v Wang* [2003] HCA 11 as to whether there was a power to reconstitute the Tribunal in a particular way. The Court notes the statement in [3] of the reasons of Chief Justice Gleeson that

> *The power of deciding the constitution of the Tribunal for the purpose of a particular review proceeding was vested in the Principal Member of the Tribunal by the Migration Act 1958 (Cth) ("the Act"), (ss.420, 420A, 421, 422, 422A).*

The Court understands that as confirmation that the Principle Member can constitute the Tribunal under one or other of those provisions.

16. At [100] Justice Kirby refers to the power in s.422A(1) to direct that a *"'member...be removed' and that 'another member constitute the Tribunal'"*. That does not mean that the Principle Member cannot also issue such a direction pursuant to the general power in s.421.

17. As to the constitution point, it is submitted for the first respondent that by s.33(3) of the *Acts Interpretation Act 1901* (Cth) the power to make an instrument includes the power to revoke or amend it. That is true, but that does not bear on the question of the power to issue a new instrument. The Court accepts the submission for the first respondent that when a matter is remitted to the Tribunal by the Court to be determined according to law, the Principle Member must make a decision as to who will constitute the Tribunal for the purpose of the review. That decision can be made pursuant to s.421 of the Act.

18. The first respondent referred to the decision of Justice McHugh in *Wang* (ante) at [34] where his Honour, in considering the reconstitution of the Tribunal in that matter, referred to the power in s.421(2). The Court takes that as confirmation that s.421 gives the Principle Member power to issue a direction as to the constitution of the Tribunal, where a matter is remitted to it for determination.

19. There is a rebuttable presumption of regularity that was explained by Griffith CJ in *McLean Bros & Rigg Ltd v Grice* [1906] HCA 1; (1906) 4 CLR 835 (4 March 1906) at 850 (Citing Justice Brewer in *Knox County v Ninth National Bank* (1893) 147 US 91) as follows:

> *It is a rule of very general application, that where an act is done which can be done legally only after the performance of some prior act, proof of the later carries with it a presumption of the due performance of the prior act.*

The presumption was also discussed in *Edwards v Commonwealth Bank of Australia* (1997) 73 IR 409 at 413-414:

> http://thomsonnxt4/firstpoint/request.aspx?citation=73+IR+409&filterBy=7*The presumption of regularity, omnia praesumuntur rite esse acta, has a long lineage: see R H Kersley, Broom's Legal Maxims (10th ed, London, Sweet & Maxwell Ltd, 1939) at p 640.*

It was described in the following way by McHugh JA (as he then was) in Minister for Natural Resources v New South Wales Aboriginal Land Council *(1987) 9 NSWLR 154 at 164:*

> *The natural home of the maxim is public law. Where a public official or authority purports to exercise a power or to do an act in the course of his or its duties, a presumption arises that all conditions necessary to the exercise of that power or the doing of that act have been fulfilled. Thus a person who acts in a public office is presumed to have been validly appointed to the office:* M'Gahey v Alston *(1836) 2 M & W 206 at 211; 150 ER 731 at 733;* R v Brewer *(1942)* 66 CLR 535 *at 548;* Hardess v Beaumont *[1953] VLR 315 at 318-319. And a council which must form an opinion as to whether there will be any detriment upon the granting of a planning permit is presumed to have formed the opinion before granting the permit:* Pearce v City of Coburg *[1973] VR 583.*

A particular application of the presumption has the result that where an act is done which can be done legally only after the performance of some prior act, proof of the latter act carries with it a presumption that there has been due performance of the prior act: see McLean Bros & Rigg Ltd v Grice *(1906) 4 CLR 835 at 849-850, and for more recent applications of that presumption, see* Attorney-General for the Northern Territory v Minister for Aboriginal Affairs *(1986) 67 ALR 282 at 297;* Dawson v Westpac Banking Corporation *(1991) 66 ALJR 94 at 99;* Australian Securities Commission v Fairlie *(1993) 11 ACLC 669 at 695 and* Re NIAA Corporation Ltd (in liq) *(1993) 12 ACSR 141 at 144.*

The presumption may be viewed as a presumption of law: see J D Heydon, Cross on Evidence (5th ed, Sydney, Butterworths, 1996) at par 1175, though a rebuttable one. The presumption prevails if there is no evidence rebutting it: see Re Bladen *[1952] VLR 82 at 86-87;* Mallock v Tabak *[1977] VR 78 at 84;* Smith v Smith *(1985)* 80 FLR 444 *at 450;* Perlt v Kahl *(1976)* 13 SASR 433*; and* Carpenter v Carpenter Grazing Co Pty Ltd *(1987) 5 ACLC 506 at 514.*

20. The Court refers also to the case of *Gosford Christian School Ltd & Anor v Totonjian & Ors* [2006] NSWSC 725 at [110]-[111] as follows:

> *The gap in the evidence as to the sequence in which the documents were signed may be filled by resort to the presumption of regularity, omnia praesumuntur rite esse acta. The relevant*

principle was succinctly stated by Lindley LJ in Harris v Knight *(1890) LR 15 P & D 170 at 179-180:*

> *The maxim, "Omnia praesumuntur rite esse acta," is an expression, in a short form, of a reasonable probability, and of the propriety in point of law of acting on such probability. The maxim expresses an inference which may reasonably be drawn when an intention to do some formal act is established; when the evidence is consistent with that intention having been carried in effect in a proper way; but when the actual observance of all due formalities can only be inferred as a matter of probability. The maxim is not wanted where such observance is proved, nor has it any place where such observance is disproved. The maxim only comes into operation where there is no proof one way or the other; but where it is more probable that what was intended to be done was done as it ought to have been done to render it valid; rather than that it was done in some other manner which would defeat the intention proved to exist, and would render what is proved to have been done of no effect. (See also* Carpenter v Carpenter Grazing Co Ltd *(1987) 5 ACLC 506 at 514.)*

> *The rule described by Lindley LJ applies here. I accordingly infer, as a matter of probability (which is all I need find), that Mr Warren signed the documents in the order necessary to give efficacy to his actions, that is, that he signed the appointment document, followed by the special resolution document, followed by the ordinary resolution document.*

21. The Court finds that the Tribunal was validly constituted by the direction (Exhibit A1), which carries with it the presumption that there was due performance of the steps required for that constitution. A presumption arises that all conditions necessary to the exercise of the power to constitute were fulfilled. The Court presumes that s.422A was complied with. There is no evidence to rebut this. Ground one is rejected.

Ground two

22. Ground two alleges that the Tribunal applied the wrong test. The applicant's 'Outline of Submissions' allege that the Tribunal required the applicant to demonstrate that he had been targeted personally, and

"discounted any harm which he may have faced which was also faced by others". The following passages at CB 137 are referred to:

> *…the applicant asserted that the authorities had targeted him in the mid-2003 raids as a suspected Maoist and in light of his Communist Party background. However, his description of the alleged June 2003 incident suggested a routing security operation involving all local inhabitants, and particularly young men.*
>
> *……*
>
> *However, the Tribunal finds with confidence that the security actions in June and October 2003 were large-scale security operations, and did not involve action against the applicant personally for reason of his past Communist Party membership, his ongoing employment as the Club or for any other reason….The applicant's continued presence in the area, until January 2004, supports the Tribunal's conclusion that the authorities did not target him personally…*

The Tribunal did not thereby apply the wrong test; it dealt with one of the applicant's claims. The Tribunal considered all the applicant's claims as set out in its synopsis (CB 133.2).

23. The applicant alleges that the Tribunal should have considered whether the applicant was targeted for his membership of a social group of *"local inhabitants who were young men"*. The Court accepts the following submissions for the first respondent:

> *…the Applicant did not expressly claim that young men formed a social group subject to persecution by the authorities and such a claim did not clearly arise from the materials before the RRT:* NABE v Minister for Immigration and Multicultural and Indigenous Affairs (No 2) *(2004) 219 ALR 27; [2004] FCAFC 263 at [61]*.
>
> *The Applicant stated that "just about everyone in the village was targeted", and that "all the authorities were suspicious of all the young people as being Maoist – he then added, however, that it was mainly the Club members who were being accused": CB 125.*
>
> *The statement made by the Applicant that the authorities were suspicious of all the young people does not amount to a claim that they suffered persecution by the authorities, not that the Applicant himself suffered persecution as a result of being a young person.*

> *Having regard to the Applicant's evidence as a whole, there was therefore no error in the RRT determining that the Applicant was claiming to have suffered persecution by the authorities on the grounds of his employment in the Club and not as a result of membership in some other broader social group.*

24. The Tribunal's decision shows that it dealt with the possibility that the authorities might be interested in the applicant for reasons other than his Communist Party background or employment in the Club, as the Tribunal used the phrase *"or for any other reason"* (CB 137.6). The Court accepts the submission for the first respondent that the applicant did not allege that he was persecuted for reasons of belonging to a particular social group, and that claim did not arise clearly from the material before the Tribunal. The Tribunal therefore covered all claims put to it.

25. The applicant complains about the Tribunal's finding of fact that the comments in the letter from the applicant's wife do not overcome the Tribunal's findings above that the applicant and his home have not been targeted in the past (CB 139.5). It is asserted that the Tribunal was required to consider the evidence as a whole before believing or disbelieving the applicant. The Court finds that the Tribunal considered the evidence leading to its conclusion at CB 138.9 that it *"does not accept that the applicant's family home is shown in the photograph, or that he or his family have suffered any personal or property damage"*. Those findings of fact were properly open to the Tribunal on the material before it and are not subject to review. It is a matter for the Tribunal which evidence it accepts or rejects: *Lee* (ante).

26. The Tribunal recorded another finding at CB 139.1 that it did not accept that the applicant's family was subject to past persecution. The Tribunal then considered the letter from the applicant's wife (which had been considered previously at CB 127.10-128.1) as part of its consideration of the evidence as a whole. The Tribunal was entitled to make findings on credibility as it considered each claim or piece of evidence; it set out its reasons for rejecting parts of the claims and evidence. The Tribunal was entitled to reject corroborating evidence: *Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002* (2003) 198 ALR 59 at [12]. The Tribunal set out its reasons

for rejecting the letter, or giving it little weight (CB 139.2-5). The Court finds no error of law. Ground two is rejected.

Ground three

27. Ground three alleges a denial of procedural fairness, alleging that the Tribunal failed to give the applicant a real opportunity to give evidence and present arguments in relation to the letter from his wife. The Tribunal's appraisal of the letter was not required to be put to the applicant pursuant to s.424A (*SZBYR v Minister for Immigration and Citizenship* [2007] HCA 26 at [18]) as its findings on it were *"obvious and natural"*: *SZGQZ v Minister for Immigration and Citizenship* [2007] FCA 1091 at [16]. The letter from the applicant's wife was submitted to the Tribunal following its final hearing of the matter (CB 139.2) and came with a covering submission (CB 137.10). The Tribunal was not required to provide the applicant with a draft of its proposed findings for the applicant to consider: *SZJJU v Minister for Immigration and Citizenship* [2007] FCA 726 per Downes J at [7]. As stated by Gleeson CJ in *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* [2006] HCA 63 at [48]:

> *Lord Diplock said in* F Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry*:*
>
> > *… the rules of natural justice do not require the decision maker to disclose what he is minded to decide so that the parties may have a further opportunity of criticising his mental processes before he reaches a final decision. If this were a rule of natural justice only the most talkative of judges would satisfy it and trial by jury would have to be abolished.*
>
> *Procedural fairness does not require the tribunal to give an applicant a running commentary upon what it thinks about the evidence that is given. On the contrary, to adopt such a course would be likely to run a serious risk of conveying an impression of prejudgment.*

28. Also, as stated in *Minister for Immigration and Citizenship v Applicant A125 of 2003* [2007] FCAFC 162 at [89]: *"the RRT is not obliged to provide 'a running commentary upon what it thinks about the evidence that is given'"*.

29. The applicant was not denied an opportunity to give evidence in the form of an affidavit or to present arguments in relation to the letter, which could have been sent with it. The Tribunal gave detailed consideration to the letter and gave reasons for placing little weight on it (CB 139.2-139.8).

30. The applicant complains about the way in which the Tribunal dealt with the letter and said that a different approach should have been taken. It is not for this Court to specify the procedure that the Tribunal should have followed when examining the letter.

31. The applicant then submits that the applicant should have been put on notice about, and given an opportunity to meet, the Tribunal's concerns. The Tribunal is not required to give an applicant a running commentary of its reasons: see (ante).

32. The applicant referred to *SZBEL* (ante) at [47] that

> *where, as here, there are specific aspects of an applicant's account, that the Tribunal considers may be important to the decision and may be open to doubt, the Tribunal must at least ask the applicant to expand upon those aspects of the account and ask the applicant to explain why the account should be accepted.*

Clearly the Tribunal did not consider the letter from the applicant's wife to be important to its decision as it placed little weight on it. The Tribunal found that the applicant and his home had not been targeted in the past, and that comments in the letter did not overcome that finding. The letter also provided a stark contrast to the country information. The letter, having been given little weight, was not important to the decision. The applicant was put on notice that the Tribunal had grounds to believe that contrary to the information in the letter from the applicant's wife, the situation in Nepal had improved (CB 127.4).

33. The applicant referred also to *SZILQ v Minister for Immigration and Citizenship* [2007] FCA 942 at [37] that the applicant be given

> *a proper opportunity to satisfy the statutory test in s.91R(3) and the obligation in s.425(1) to invite an applicant to a hearing to give evidence and present arguments about issues arising in relation to the decision under review.*

In the present matter, s.425 was complied with (CB 47, 84) and the applicant had a full opportunity to satisfy the statutory test in s.91R(3) in the course of hearings before the delegate and two reviews before the Tribunal (CB 53-78, 115-141). The Court does not find a denial of procedural fairness. Ground three is rejected.

Conclusion

34. The Court finds that the Tribunal's decision is a privative clause decision that has not been infected with jurisdictional error. In such circumstances, and pursuant to s.474 of the Act, there is no jurisdiction for this Court to interfere.

35. Accordingly, the application and amended application are dismissed.

I certify that the preceding thirty-five (35) paragraphs are a true copy of the reasons for judgment of Turner FM

Acting Associate: M Giang

Date: 6 December 2007