

Tanji v Minister for Immigration & Multicultural Affairs **[← 2001] FCA 1100 → (10 August 2001)**

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FEDERAL COURT OF AUSTRALIA

Tanji v Minister for Immigration & Multicultural Affairs ← [\[2001\] FCA 1100](#) →

MIGRATION - application for an order for review - persecution for reason of political opinion - distinction between political activity and political opinion - imputed political opinion - family as a social group - where RRT has incorrectly applied the law to the facts - where RRT has asked itself the wrong question

[Migration Act 1958](#) (Cth) [s 476](#) (1)(e)

Cameirao v Minister for Immigration and Multicultural Affairs [\(2000\) FCA 1319](#)

Craig v South Australia [\[1995\] HCA 58](#); (1995) 184 CLR 163

Minister for Immigration and Ethnic Affairs v Yusuf [\[2001\] HCA 30](#); (2001) 180 ALR 1

SAMIR MOHAMMED TANJI v

MINISTER FOR IMMIGRATION & MULTICULTURAL AFFAIRS

W 90 of 2001

TAMBERLIN J

PERTH

10 AUGUST 2001

IN THE FEDERAL COURT OF AUSTRALIA

WESTERN AUSTRALIA DISTRICT REGISTRY W 90 OF 2001

BETWEEN: SAMIR MOHAMMED TANJI

APPLICANT

AND: MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS

RESPONDENT

JUDGE: TAMBERLIN J
DATE OF ORDER: 10 AUGUST 2001
WHERE MADE: PERTH

THE COURT ORDERS THAT:

1. The application for review is granted.
2. The decision of the Refugee Review Tribunal is set aside.
3. The matter is referred back to the Refugee Review Tribunal, differently constituted, for consideration.
4. The respondent to pay the applicant's costs of this application.

Note: Settlement and entry of orders is dealt with in Order 36 of the [Federal Court Rules](#).

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JUDGE: TAMBERLIN J
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PLACE: PERTH

REASONS FOR JUDGMENT

1 The applicant is a Palestinian born in Syria who arrived in Australia on 12 October 2000. On 23 October 2000 he lodged an application for a protection visa with the Department of Immigration and Multicultural Affairs under the [Migration Act 1958](#) (Cth) ("the [Act](#)"). On 8 December 2000 a delegate of the Minister for Immigration and Multicultural Affairs refused to grant a protection visa and on 12 December 2000 the applicant applied for review of that decision to the Refugee Review Tribunal ("the RRT").

2 In its decision of 6 March 2001, the RRT affirmed the decision not to grant a protection visa. Details of the background claims and evidence are set out in the RRT decision and I will not repeat them here.

3 The principal facts are that the applicant was born in Damascus, Syria, in 1976 and lived all his life in Syria, with the exception of a three month period in Lebanon in about July 2000. His father, who died in 1999, had been an officer with the Fateh movement. His father's involvement with Fateh occurred during the Lebanese War. On his return to Syria, the applicant's father was detained and severely mistreated for a period of two years during the 1980s. The RRT accepted that the applicant's father was, on occasion, questioned by the authorities after his release from detention, but noted that he was not again detained by them. The RRT did not accept that the death of the applicant's father was a "direct result of his treatment by the Syrians".

4 The applicant has never been involved in any political organisation, nor has he been questioned by the authorities specifically in relation to Fateh. The applicant has two brothers and they have never been questioned or arrested by Syrian authorities. Nor have they ever been involved in any political associations.

5 In its findings and reasons, the RRT found the applicant to be a generally credible witness. However, he was found to have exaggerated that section of his account which dealt with his treatment by the Syrian authorities following their refusal to give permission for him to go to Lebanon.

6 The RRT accepted that Palestinians in Syria are discriminated against in a number of respects but did not accept that the applicant's unemployment, for example, was related to his ethnicity, but found that it was due to the poor economic situation in Syria. While the RRT accepted that the applicant faced difficulties because of his Palestinian background, it did not accept that the difficulties described by the applicant were sufficiently serious to amount to persecution in a Convention sense. At page 11 of its decision, when considering the evidence, the RRT records:

*"It was put to the applicant that he had not mentioned in the hearing the events he described in his statement to the effect that he was called in for questioning 3 times by Syrian Intelligence and was bashed by them after he was refused permission to go to Lebanon. He said that everything happened as he described in his statement. He was asked why he had not mentioned this, which seemed to be an important claim, earlier in the hearing. He said he had not been asked a question about it and therefore he had not provided the information. **He said that he would get a notice from the Intelligence telling him to go into the office. When he got there, they would take him in a car with a bag over his head and would beat him up and punch and kick him. This would go on for 2 or 3 hours. They would ask questions about why he wanted to go to Lebanon. He told them it was for medical reasons but they did not believe him. They would say things to him such as 'Why are you like your father?'** The applicant said that these incidents took place over some months from around February to June or July before he went to Lebanon."* (Emphasis added)

7 The applicant's version of these incidents was basically accepted by the RRT which said, at 23:

*"The applicant has claimed that the authorities not only withheld permission for him to go to Lebanon, but that they called him in on three occasions in early 2000 to harass him after they had refused him permission to go to Lebanon. The applicant's written and oral accounts of what happened to him on the three occasions when he was called into Intelligence were vague and lacking in detail, beyond the applicant's assertion that when he got to Intelligence he would be beaten, punched and kicked, and that **these incidents took place over a period of a few months in 2000** before the applicant went to Lebanon in July of that year. **There do not appear to have been any specific allegations made to the applicant about the reason for their behaviour towards him, beyond comments that the applicant was like his father. The Tribunal accepts that the applicant was called in by Security on a number of occasions and that he was insulted and mistreated by Security officers by being kept for some hours on each occasion, and on one occasion overnight, and by being punched, kicked and beaten.***

The reason for the applicant's mistreatment is not readily identifiable. The applicant was effectively apolitical. While his father had worked for Fateh almost 20 years ago, his father's detention had long been over. No attempt had been made to question or harass the applicant or his brothers in the past because of their imputed political opinion. The mistreatment therefore appears to have been in the nature of bullying, of an exercise of vindictiveness by a particular group of officials over a person who was perceived as physically weak, or at least suffering from an illness. The applicant himself says in his Statutory Declaration: 'They just wanted to torture me', implying that there seemed to be no logical reason for their behaviour." (Emphasis added)

8 The RRT concluded, at 24:

*"The Tribunal is not satisfied that there is a real chance that the applicant will be persecuted for reasons of his **political opinion** if he returns to Syria. It is of the view that **the group who harassed and mistreated the applicant in early 2000 used his father's political history as a vague rationale for bullying him**, and an intimidatory tactic, rather than because they suspected him of anti-regime **political activity**. As the Tribunal has noted, he was never questioned about his **political activities** until he was refused permission to go to Lebanon, his brothers were never questioned, and he has never engaged in **political activity**. Furthermore, the independent information indicates that the authorities' treatment of those engaged in actual or imputed opposition **political activity** is very harsh (see for example, the US State Department and Amnesty International Reports for 1999, page 12), often including prolonged detention and torture. This did not happen to the applicant in the past." (Emphasis added)*

REASONING ON REVIEW

9 The conclusion that the security officers used his father's political history as a "vague rationale for bullying him, and an intimidatory tactic" is a finding that the applicant was attacked because of his father's political opinions and activity and that this was considered to justify such violence towards the applicant in the perception of his attackers. Put another way, the perception was found to be that he could be attacked because, in the eyes of his attackers, he was associated with his father's political opinion or activity. The memory of the father continued to be of importance to the attackers, otherwise they would not have referred to the father. He was therefore attacked for reasons of political opinion, although it may be that he did not in fact himself hold a political opinion. That is sufficient to satisfy the terms of the 1951 Convention Relating to the Status of Refugees definition of a refugee, which refers to a "well-founded fear of being persecuted for reasons of ... political opinion". The opinion does not have to be that of the person seeking refugee status: see *Cameirao v Minister for Immigration and Multicultural Affairs* (2000) FCA 1319 at [25] per O'Loughlin J.

10 To take an extreme example, if a governing regime decides to punish the children of parents who hold Communist political opinions, then it would be open for the children to claim refugee status on the basis that they had a well-founded fear of persecution for a political reason notwithstanding that they held no political beliefs. Of course, it could also be claimed by the parents that they themselves were being persecuted for political reasons by the infliction of harm on their children.

11 Having made the findings referred to above, it was an error of law within [s 476\(1\)\(e\)](#) for the RRT to reach a conclusion that there was no real chance that the applicant would be persecuted for reasons of political opinion if returned to Syria: see *Craig v South Australia* [1995] HCA 58; (1995) 184 CLR 163 at 179 approved by the High Court in *Minister for Immigration and Multicultural Affairs v Yusuf* [2001] HCA 30; (2001) 180 ALR 1 at 21. This conclusion involved, in my view, an incorrect application of the law to the facts as found by the decision-maker on the face of the record.

12 In addition, notwithstanding the introductory sentence of the last quoted paragraph, which refers to "political opinion", it is apparent that the emphasis placed by the decision-maker was on either engagement in, or imputed perception of engagement in, anti-regime "political activity". The RRT did not directly address the question whether, as a result of his father's activities and history, the applicant was imputed by the security officers to hold a particular "political opinion", namely that attributable to Fateh for which his father had been detained and severely mistreated for two years. The material indicates that his father was on occasions questioned by the authorities but was never again detained after his release from detention up to the time of his death in 1999. It is evident that his

father's history had not been forgotten when one bears in mind that his father was specifically mentioned on the occasions of the attacks on the applicant. The definition of "refugee" in terms is concerned with persecution for reasons of "political opinion". It is not limited to perceptions of or actual "political activity". A person could be perceived to hold an opinion even if there was no overt or covert political activity by that person. This important issue was not discussed. By wrongly narrowing the question to be addressed to the issue whether or not the applicant was attacked on these occasions because of suspected "political activity" the RRT, in my view, asked itself the wrong question and that is an error of law: see *Yusuf* at 12, 21-22.

13 The difference between being imputed with engagement in "political activity" and holding a particular "political opinion" is a real distinction. A person may have no history of political activity or not be imputed with "political activity", but nevertheless be persecuted because of a perception that such person holds a particular "political opinion". In the present case, the accepted evidence is that when he was attacked and detained his attackers stated that he was "like his father". The only rational explanation of the use of this language is that he was imputed in their perception with holding a political opinion similar to or identical with that of his father. The best guide as to the reasons which actuated the attack must be the words used by the attackers at the time. There is no contest that words linking him with his father were uttered at the time.

14 Also, the decision of the RRT proceeds on the basis that, assuming the applicant's family constituted a particular social group, the authorities had no interest in the applicant because he was his father's son. If family membership was a consideration, then it is said that they would have acted against the applicant or his brothers at an earlier point of time. The important distinction is, however, that attention appears to have focused on the applicant rather than on his brothers because it was only the applicant who came to the attention of the authorities by making an application to go to Lebanon to get medication to help his medical condition. There is no indication that his brothers ever came to the attention of the authorities in any particular way. The words used by the attackers during the violence in 2000 indicate unequivocally that it was because of the relationship between the applicant and his father that he was being attacked. It is speculative in the extreme and without evidentiary foundation to suggest that these words were uttered simply to mask a display of random brutality. It must be kept in mind that these assaults were by security officers and that the applicant's father had died in recent times. There is no evidence referred to by the RRT to support a conclusion that the attackers were indifferent to the fact that he was perceived by the attackers in the same way as his father. The statement which he attributes to the attackers, "why are you like your father?", was accepted by the decision-maker, and this clearly amounts to an accusation which could only refer to the father's political opinion, his history of involvement with Fateh and his punishment for that activity.

This is a further and different error based on membership of the social group comprised by the family.

CONCLUSION

15 The RRT erred in this case in several respects. It erred in its underlying assumption that the political activity or opinion had to be carried out or held by the applicant, or so perceived, and that persecution for the opinion or activity of his father was not sufficient.

16 In addition, the RRT erred in asking asked itself the wrong question; namely, whether he was attacked for imputed anti-regime political activity, rather than whether he was attacked because of actual or imputed political opinion similar to that of his father. Furthermore, on the assumption made by the decision-maker that the family, in this case, was a particular social group, the statements made by the attackers can only sensibly mean that he was being attacked because of his family relationship. That is to say, by reason of his membership of that family group.

17 In relation to the **extent of the harassment**, it is evident that the calling in of the applicant by security officers on three occasions in the period between February and July 2000 and the consequent detention, punching, kicking and beating does constitute a sufficient degree of harassment to constitute persecutory conduct and to constitute a reasonable objective basis for the existence of a real chance of persecution for a Convention reason if the applicant is returned to Syria. The last of these beatings took place less than ten months before the date of the RRT's decision.

18 For the above reasons I consider that the application for review should be granted. The decision of the RRT should be set aside. The matter should be referred back for consideration by the RRT differently constituted. The respondent should pay the applicant's cost of this application for review.

I certify that the preceding eighteen (18) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Tamberlin.

Associate:

Dated: 10 August 2001

The Applicant appeared in person

Counsel for the Respondent: Mr R L Hooker

Solicitor for Respondent: Australian Government Solicitor

Date of Hearing: 7 August 2001

Date of Judgment: 10 August 2001

