

BETWEEN:



WET 052

Appellant

THE REPUBLIC OF NAURU

Respondent

**RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS**

**Application for leave to amend**

1. The Tribunal only objects to the application to amend on the basis that the appellant should not be permitted to advance proposed ground 4 for the first time on appeal.
  - RS [52]-[58]

**Ground 1 – irrational finding based on transfer interview**

2. The Tribunal considered that the appellant's failure to refer to certain matters at his transfer interview, which subsequently assumed "central importan[ce]" to his claims ([22]), cast strong doubt on the truth of those claims.
- 10 3. The question is: could a logical and rational Tribunal have attributed some weight or significance to the appellant's failure to mention those matters in the transfer interview?
  - SZMDS at [96], [124]-[131], [133], [135]
4. The answer is "yes", in circumstances where:
  - the appellant was told that the information he gave would "be read and used by the people who will be assessing your claim for refugee status", and "may be compared against the information you give in your refugee application" (AB 127)
  - the appellant indicated he understood this, consented to the interview, and consented to having the interview recorded (AB 127)
  - 20 • the appellant was asked why he left Iran, in response only claimed to fear harm from his father, and gave a reasonably detailed explanation for that fear which made no mention of the "centrally important matters" later advanced" (AB 137)
  - the appellant was also asked what would happen to him if were to return to Iran, and again made no mention of the "centrally important matters" later advanced (including to fear harm from Iranian authorities) (AB 137)
  - the Tribunal considered ([20]-[21]) the appellant's purported explanations for his failure to refer to these matters at the entry interview (AB 186-187, 263-265, 289)

5. Furthermore:

- contrary to the appellant's submissions, there is no evidence that the recording of the transfer interview was not "before the Tribunal" (indeed there is evidence to the contrary: AB 264-265), nor did the appellant make a contention to the Supreme Court to that effect;
- there was no claim to the Tribunal of misinterpretation at the entry interview of any of the "centrally important matters", nor did the appellant advance any evidence to the Supreme Court of misinterpretation;
- the appellant accepted before the Tribunal (186-187, 289) and the Supreme Court (AB 24, 38-39, 89, 121) that he did not refer to those matters in his interview.

10

#### Ground 4 – failed asylum seeker claim

6. At no stage, not even in the transfer interview, did the appellant ever claim, or even suggest, that his involvement in demonstrations in 2009 "mainly in the evening – about the election", gave rise to, or even contributed to, a risk of him suffering harm in Iran.

- Cf. AB 137, 168-180, 183-223, 271, 274-275

7. The appellant "agree[d] that failed asylum seekers per se may not face harm solely on the basis of seeking protection" (AB 293). However, the appellant claimed that certain circumstances would, cumulatively with his prospective status as a failed asylum seeker, give rise to a risk of harm. These included his activities on the Internet and Facebook (AB 208, 293-294). They did not include his participation in demonstrations in 2009.

20

8. The Tribunal did not accept that any failed asylum seeker who was involvement in any protest or demonstration of any kind and at any time would face a risk of harm.

9. The Tribunal put to the appellant that certain persons who are "active dissidents", or who had a "serious political background", might face a risk of harm on return and invited his comment (AB 274). The appellant did not suggest that his involvement in demonstrations in 2009 gave rise to, or even contributed to, such a risk profile. It is unremarkable, in that context, that the Tribunal ultimately did not find that the appellant had a "certain profile" of the kind which may attract a risk of harm ([50]).

10. The Tribunal did not fail to consider any claim actually advanced by the appellant with respect to his prospective status as a failed asylum seeker.

30

- *NABE* at [55]-[68]
- *Appellant S395* (2003) 216 CLR 473 at [1]

Dated: 15 June 2018

**NICK WOOD**