HIGH COURT OF AUSTRALIA

GAGELER, NETTLE AND EDELMAN JJ

THE REPUBLIC OF NAURU APPELLANT

AND

WET040 RESPONDENT

The Republic of Nauru v WET040 [No 2]
[2018] HCA 60
5 December 2018
M154/2017

ORDER

1. *Appeal allowed.*

2. *Set aside the orders of the Supreme Court of Nauru made on 28 September 2017 and, in their place, order that the appeal to that Court be dismissed with costs.*

3. *The respondent pay the appellant's costs of this appeal.*

On appeal from the Supreme Court of Nauru

Representation

G R Kennett SC with N M Wood for the appellant (instructed by Republic of Nauru)

No appearance for the respondent

R Merkel QC with S A Beckett and M L L Albert for the Refugee and Immigration Legal Centre, as amicus curiae (instructed by Allens)

CATCHWORDS

The Republic of Nauru v WET040 [No 2]

Immigration – Refugees – Nauru – Appeal as of right from Supreme Court of Nauru – Where Secretary of Department of Justice and Border Control determined respondent not refugee and not owed complementary protection – Where Refugee Status Review Tribunal affirmed Secretary's determination – Where Supreme Court of Nauru allowed appeal because Tribunal found respondent's claims implausible without rational basis – Whether Tribunal's reasons adequate.

Words and phrases – "adequate reasons", "basic inconsistencies", "implausible", "independent country information", "probative material", "rational inference", "speculation or conjecture".

Migration Act 1958 (Cth), s 430(1).
Refugees Convention Act 2012 (Nr), s 34(4).

1 GAGELER, NETTLE AND EDELMAN JJ. This is an appeal as of right, pursuant to s 5(1) of the *Nauru (High Court Appeals) Act 1976* (Cth), from a judgment of the Supreme Court of Nauru (Crulci J)[1]. The Supreme Court allowed the respondent's appeal brought under s 43(1) of the *Refugees Convention Act 2012* (Nr) ("the Refugees Act") against a decision of the Refugee Status Review Tribunal ("the Tribunal"). The Tribunal had affirmed a decision of the Secretary of the Department of Justice and Border Control ("the Secretary"), made pursuant to s 6(1) of the Refugees Act, to reject the respondent's application to be recognised as a refugee in accordance with the Refugees Act or as a person to whom the Republic of Nauru ("Nauru") owed complementary protection under that Act.

2 The appeal concerns the Tribunal's obligation to give reasons in accordance with s 34(4) of the Refugees Act.

3 Section 34(4), which reflects the terms of s 430(1) of the *Migration Act 1958* (Cth), provides that:

> "The Tribunal must give the applicant for review and the Secretary a written statement that:
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> (a) sets out the decision of the Tribunal on the review; and
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> (b) sets out the reasons for the decision; and
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> (c) sets out the findings on any material questions of fact; and
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> (d) refers to the evidence or other material on which the findings of fact were based."

4 The Tribunal found that material aspects of the respondent's factual allegations were implausible. On appeal to the Supreme Court of Nauru, Crulci J held that the Tribunal had failed to comply with s 34(4) of the Refugees Act by failing to identify the "basic inconsistencies" or "probative material" or "independent country information" on which the Tribunal based their conclusion of implausibility. For the reasons which follow, the Tribunal did not fail to give adequate reasons for their decision, and the appeal should be allowed.

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1 *WET 040 v The Republic* [2017] NRSC 79.

Respondent's original claim for protection

5 The respondent is an Iranian national. He left Iran for Indonesia in June 2013 and later travelled by boat to Christmas Island. In January 2014, he was transferred to Nauru.

6 In the respondent's Refugee Status Determination application, he claimed to have married in 2010, and that the first two years of his marriage were relatively problem free. Some five or six months before he left Iran, he found out for the first time that his wife had been married and divorced before he and she were wed, and he said that that made him confused and suffer loss of face. One night, about two and a half months before he left Iran, someone poured acid over his car. He called the police, who attended and took a report and then left. The respondent claimed that, the following day, his sister received a text message from his wife's brother, in effect admitting responsibility for the attack and threatening that "next time" he would use acid on the respondent's face. The respondent claimed that he learned through his mother that his sister and his wife's brother had been in contact after his wife had introduced them to each other. The respondent realised that his wife's aim in so effecting the introduction was to bring about a marriage between her brother and the respondent's sister as a pre-emptive measure to prevent the respondent from divorcing his wife. According to the respondent, his sister met his wife's brother on a couple of occasions but thereafter kept her distance when she found out that he used crystal methamphetamine and drank alcohol. Nevertheless, one day she went to his workplace at his request, believing that other people would be present, where he attempted to rape her in order to force her to marry him. The respondent claimed that the attack was part of the plot devised by the respondent's wife to induce the respondent not to divorce her.

7 The respondent later told his wife to leave the house, which she did, but the next day she returned with a police officer and a subpoena requiring the respondent to attend court in a few days to answer allegations that he had beaten his wife. He claimed that he could not believe it, because he had never touched her, and later realised that she had taken 10 million tomans (approximately A$4,150 at the time of the Tribunal's decision) and gold jewellery which he had purchased as an investment. He complained about the theft and was referred to the police station. He was told to return in four days when he could take a police officer with him to his wife's parents' home to recover his property. When, however, he showed the police the subpoena, and they saw the name of his father-in-law on it, they told him that his wife's family must have friends in high places.

8 When the respondent attended court to answer the assault charges, his wife exhibited bruising the result of falling down. He claimed that he had

nothing to do with it. He also claimed that the odds were stacked against him and that he was not allowed to speak in his own defence, as a result of which he was convicted of assaulting his wife. He was released on bail pending sentence.

9 Several days after the respondent's court appearance, his wife arrived with a police officer to claim her dowry. According to the respondent, it should have consisted of only 57 items but his wife had in her possession a court document which had been changed to entitle her to anything the respondent had purchased in the time that they were together. The respondent said that he challenged the document in court but, when the judge saw the name of the respondent's father-in-law, the judge yelled at the respondent that he must pay. Four other judges were said to have reacted in the same way. A friend of one of the respondent's relatives, who was a court janitor, enquired as to how the case was going and was told to keep his nose out of it or he would lose his job. The respondent said that, on one occasion when he went to court, his father-in-law stated in court that his son had thrown acid on the respondent's car and threatened that he would throw it in the respondent's face, but the judge had dismissed that as a joke.

10 The respondent claimed that he perceived that his father-in-law was using his connections to the Basij, a state paramilitary organisation, to have the respondent followed, and he feared that it was only a matter of time before his father-in-law would use his connections to have the respondent imprisoned or that his brothers-in-law would use their connections to have the respondent killed or attacked with acid. Accordingly, the respondent said, he fled to Christmas Island. After leaving Iran, he was sentenced in his absence to a fine for the assault of his wife and his father paid the fine on his behalf.

11 He claimed to fear that, if he returned to Iran, he would be detained, imprisoned, tortured, attacked with acid or killed, either through the justice system at his father-in-law's behest or extra-judicially through his brothers-in-law, and that there was no place in Iran where he would be safe.

Secretary's determination

12 The Secretary accepted that the respondent was married but had separated in acrimonious circumstances on learning that his wife had previously been married and divorced. The Secretary also accepted that the respondent's wife had claimed that the respondent assaulted her and failed to pay her maintenance and that she had obtained court orders against the respondent for outstanding maintenance and the return of her dowry. The Secretary further accepted that the respondent's car had been damaged in an acid attack. But the Secretary did not accept that the respondent's wife's family had sought to harm the respondent to prevent him divorcing his wife, or that the respondent had not obtained a divorce from his wife.

Application for review

13 In a further statement which the respondent filed in support of his application for review of the Secretary's decision, he claimed, for the first time, that the main reason that he fled Iran and feared returning there was that he would be perceived as having a political and religious opinion that was anti-government, anti-regime and anti-Islamic; that his status as a failed asylum seeker would further be seen as reflecting his imputed anti-regime and anti-government sentiments; and that he would be prejudiced because of his lack of religious beliefs and his ethnicity as an Azeri Turk. He also stated that, even before he discovered that his wife was previously married and divorced, there were problems in their relationship because his in-laws were Islamic fundamentalists and his father-in-law was a member of Sepah, a fundamentalist state security organisation, who adhered to particularly strict practices incorporating fundamentalist laws and doctrines into all aspects of life. The respondent claimed that his in-laws had lived very close by and had come to his house on a daily basis attempting to force him to be more observant in his Islamic faith and practice; in effect to force him into Islamic fundamentalism. He said that that was mental torture for him, because he was only a nominal Muslim, and that because he was not a genuine follower, his father-in-law had developed an enmity towards him.

14 The respondent further claimed, for the first time, that his wife's previous divorce was not public knowledge, because she was married as a child and in name only and so had never lived with the groom, but the fact that the respondent had discovered the secret and could discredit her family by disclosing it gave her family new reason to hate him. The respondent stated, however, that he had not divorced his wife or initiated proceedings for divorce before leaving Iran and that the dowry that his wife had come and collected did not suggest that a divorce had been initiated or finalised.

15 Finally, the respondent claimed that his father-in-law had worked for Sepah for ten years and held such a high position in that organisation that, on one occasion, he was able with just one phone call to resolve the trouble which the respondent's brother-in-law was then experiencing with the law. He also claimed that, because Sepah controls the Iranian government, the respondent's problem with Sepah was a problem with the Basij and thus the entire regime of the government of Iran.

Tribunal's reasons

16 After setting out the respondent's claims and evidence, the Tribunal stated at paragraph 70 of their reasons that:

> "Having considered the information provided by the [respondent], the Tribunal believes there are good reasons to doubt the truth of his claims concerning the enmity of his wife's family toward him. The Tribunal notes that he has provided a shifting set of explanations for these alleged attitudes, *as follows*." (emphasis added)

17 Thereafter in paragraphs 71 to 93 of their reasons, which take up over four closely typed A4 pages, the Tribunal recorded and analysed the "shifting set of explanations". The shifts included several changes in the respondent's reason for not having reported to the police the text message which he said his sister had received, in which his brother-in-law allegedly claimed responsibility for the acid attack and threatened "next time" to tip acid on the respondent's face; a notable developing change in emphasis from the respondent's initial claims to his claims before the Tribunal as to why the respondent's wife's family displayed enmity towards the respondent – originally, the claim was that the enmity was the result of the family's wish to prevent the respondent divorcing his wife, but later the prevention of the divorce became but a minor part of the story and the respondent placed major emphasis on a claim that his father-in-law was an irrational, vindictive and proud person, part of a violent and vengeful family and a man who wielded power over the Iranian authorities and the courts; a progressive change in the respondent's evidence as to the circumstances in which his marriage occurred; irreconcilable changes in the respondent's evidence as to whether his wife's first marriage was in fact a secret; and a large progressive shift in the respondent's evidence as to why his wife's family wished to harm or kill him: from a wish to prevent the respondent divorcing his wife, to preventing him from divulging the secret of his wife's previous marriage, to religious fanaticism and intolerance of the respondent's lack of piety and commitment to Islam, to the respondent having knowledge of his father-in-law's abuses of power and fear that the respondent would reveal them.

18 The Tribunal stated that they doubted that the acid attack came from the respondent's wife's family or that such persons had claimed credit for the attack, and the Tribunal stated that they were fortified in that view by the changes in the respondent's evidence as to why he had not reported the text message to the police. When the respondent was first asked why he had not reported the text message, he said that it was because his brother-in-law had used a cheap SIM card and thrown it away after the text. Later, in his evidence, he said that it was because the police had told him that a text message would not be regarded by the court as evidence and that, if he pursued the matter, he risked attracting defamation proceedings at the suit of his brother-in-law. The Tribunal observed that the respondent appeared to change his story when he realised that the Tribunal doubted what he said, and that the shifting basis of the respondent's claims threw doubt on his credibility. The Tribunal did not accept that there was

credible evidence to link the acid attack to the respondent's brother-in-law or a threat designed to prevent the respondent divorcing his wife.

19 The Tribunal also considered that the bringing of the various court cases by the respondent's wife's family was inconsistent with the respondent's claim that his wife's family wished to prevent the respondent divorcing his wife. The Tribunal accepted that the respondent had not been divorced by the time he left Iran but found that it was unlikely that the respondent's wife's family would have instituted the several proceedings referred to if they had been at all concerned to preserve the marriage.

20 The Tribunal rejected the respondent's claim that his wife had plotted to have her brother rape the respondent's sister and thereby force the respondent's sister to marry his wife's brother. The Tribunal noted that they had directly put to the respondent that they found that claim to be inherently implausible and that it was additionally implausible that his sister would associate with a family who had deceived her brother into marrying a divorced woman, as they were alleged to have done.

21 The Tribunal set out in detail why they did not accept the respondent's claim that he feared that his wife's family would harm him. Based on the shifts in the respondent's claims from time to time, and the inherent improbabilities which the Tribunal identified in the respondent's various versions of events, the Tribunal concluded that they were not satisfied as to the credibility of key parts of the respondent's evidence concerning the attitude of his wife's family towards him, or that his wife's family were motivated by religious fanaticism to harm him, or moved by an aim of preventing him divorcing his wife, or concerned to prevent news of the respondent's wife's previous marriage being disclosed. In the result, the Tribunal did not accept that there was any credible basis for the claim that the respondent would be harmed by his wife's family, or Sepah or the Basij.

22 The Tribunal further did not accept that the respondent might be imputed with an adverse political opinion by reason of his religious disposition. As the Tribunal observed, there was nothing apart from the respondent's evidence to suggest that he had undergone any significant change of religious disposition since he left Iran, at which time, according to his original statement, he had been a nominal albeit not particularly devout Muslim and, therefore, the Tribunal did not accept that there was any real possibility that he would be harmed for religious reasons.

23 Nor did the Tribunal accept that the respondent would suffer any significant risk of harm by reason of his Azeri ethnicity. For as the Tribunal noted, despite there being some degree of Iranian societal discrimination against the Azeri community, overall the Azeri community were well integrated into

Iranian society and were prominent in the Islamic clergy, business and government. The respondent was from a well-off family, had received a good education and had been working in a skilled occupation for some years before he left Iran.

24 Finally, the Tribunal rejected the claim that the respondent faced a serious risk of harm as a failed asylum seeker. There was no credible evidence to indicate that any checks which might be carried out on him would uncover information that would cause the authorities to suspect him of being a dissident or holding an opinion against the regime.

Supreme Court of Nauru's reasons

25 Crulci J held[2] that the Tribunal's findings as to the incredibility of the respondent's claims regarding the enmity of his wife's family towards him were unsound because, "when making a credibility finding, a bare assertion that a claimed event is 'implausible' will only stand if the event is 'inherently unlikely'". Otherwise, her Honour said[3], for the Tribunal to conclude that an allegation is implausible, the Tribunal "must point to 'basic inconsistencies' in the evidence, or 'probative material' or 'independent country information'". Crulci J accepted[4] the respondent's argument that the Tribunal used the language of "implausibility" in respect of three key findings without any rational basis and that certain of the Tribunal's findings were "speculative" and "matters of conjecture". They were: that the acid attack on the respondent's car could not "plausibly" have been intended to prevent the respondent from divorcing his wife; that it was "generally implausible" that the police would have ignored the evidence of the text message allegedly sent by the respondent's brother-in-law to the respondent's sister; and that the respondent's wife's plot to have her brother marry the respondent's sister to prevent the respondent divorcing her was "inherently implausible".

No error in the Tribunal's reasons

26 Crulci J's reasoning is erroneous. Evidently, her Honour based[5] it on the judgment of Lee J in *W64/01A v Minister for Immigration and Multicultural*

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2 *WET 040 v The Republic* [2017] NRSC 79 at [34].

3 *WET 040 v The Republic* [2017] NRSC 79 at [35].

4 *WET 040 v The Republic* [2017] NRSC 79 at [38]-[46].

5 *WET 040 v The Republic* [2017] NRSC 79 at [35].

Affairs[6], unaware that the judgment was later overturned on appeal[7]. Crulci J also relied[8] on certain of the observations of the majority of the Full Court of the Federal Court of Australia (Tamberlin and R D Nicholson JJ) in *W148/00A v Minister for Immigration and Multicultural Affairs*[9] although the majority also observed[10] that "a reviewing body must not set aside [a] finding [of credibility] simply because it thinks that the probabilities of the case are against, or even strongly against, the finding". More fundamentally, the Tribunal's implausibility findings were not speculative or matters of conjecture or unsupported by basic inconsistencies.

27 In paragraph 74 of their reasons, the Tribunal stated that:

> "The Tribunal considers that the [respondent] changed his evidence on this issue when it appeared to him unlikely that the Tribunal would accept he would complain to the police over the attack and then fail to follow up by providing them with evidence pointing to the perpetrator. The Tribunal also finds it generally implausible that if the police had gone to the trouble of visiting the [respondent's] house to make a report of an incident involving an unknown perpetrator, they would then ignore the evidence he supplied of the perpetrator's identity and confession, on the grounds that the means by which he had discovered it did not constitute legal proof. The Tribunal finds this casts doubt over the credibility of his claims about the incident. The Tribunal notes that he has produced a document said to be a police report indicating an unknown person damaged his car with acid, and it is prepared to accept that such an incident did occur. It does not accept there is any credible evidence to link it with his brother-in-law ... or a threat designed to prevent him divorcing his wife."

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6 [2002] FCA 970.

7 *Minister for Immigration and Multicultural Affairs v W64/01A* [2003] FCAFC 12.

8 *WET 040 v The Republic* [2017] NRSC 79 at [36].

9 (2001) 185 ALR 703.

10 *W148/00A v Minister for Immigration and Multicultural Affairs* (2001) 185 ALR 703 at 716 [64]. See also *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 611 at 636 [96], 648 [131] per Crennan and Bell JJ; [2010] HCA 16; *CQG15 v Minister for Immigration and Border Protection* (2016) 253 FCR 496 at 517-519 [59]-[61], [65].

28 The first sentence of that paragraph refers back to the analysis earlier mentioned of how the respondent had progressively given different reasons for not reporting to the police the text message which he alleged his brother-in-law had sent to his sister, and in which, according to the respondent, his brother-in-law had admitted responsibility for the acid attack on the respondent's car and threatened "next time" to tip acid on the respondent's face. Thus, contrary to Crulci J's criticisms of the Tribunal's reasons, the Tribunal's conclusion that the respondent had changed his evidence when it appeared that the Tribunal would not accept the evidence which he first gave on the subject was not speculation or conjecture. As is apparent, it was a rational inference drawn from the fact that the respondent had changed his evidence when pressed as to why he had not reported the text message to the police.

29 The second sentence of paragraph 74 of the Tribunal's reasons refers to the final reason which the respondent gave for not providing the text message to the police: that the police told him that it would not constitute legal proof. As can be seen, the Tribunal stated that they found that to be implausible because, given that the police were said to have gone to the respondent's home when he first complained of the acid attack and to the effort of preparing a police report about the incident, it would be surprising if the police would then decline to act on text message evidence of the identity of the culprit simply because it was not regarded as admissible evidence. So to conclude was not speculative or conjecture. It was a logical deduction grounded in the seeming improbability of the respondent's version of events. Popular perception and everyday experience is that police officers regularly act on significant inculpatory information regardless of whether it amounts to admissible evidence.

30 The third sentence of paragraph 74 of the Tribunal's reasons is an expression of the Tribunal's conclusion that the combined effect of the way in which the respondent changed his evidence, the inherent implausibility of his evidence as to why he had not reported the text message to the police, and his later inconsistent evidence that the police did nothing about the text message because it did not amount to legal proof, was to cast doubt over the credibility of the respondent's claims about the incident.

31 That conclusion was not speculative or conjecture or unsupported by basic inconsistencies. It was a rational inference that the respondent was dissembling. Granted, the Tribunal did not state expressly that the respondent was a liar, and the Tribunal did not there repeat the basic inconsistencies. But the process of reasoning is clear: either the events surrounding the acid attack were as presented in one or other of the several versions of events to which the respondent variously deposed, or they were not; and, as the Tribunal concluded, for the reasons they gave, it was probable that they were not.

32 In paragraph 75 of their reasons, the Tribunal stated:

> "The Tribunal is also not satisfied that the various court cases brought by [the respondent's wife's] family against the [respondent], for domestic violence, return of the dowry and payment of maintenance are at all consistent with the continuation of the marriage and the avoidance of divorce. The Tribunal accepts that, as he claims, the [respondent] was not divorced from his wife by the time he left Iran and it also accepts the representative's contention that divorce under Islamic law cannot be achieved as simply or quickly as the Secretary may have believed. It accepts that these various legal actions do not in themselves demonstrate that the [respondent] was divorced from his wife or that he had even begun divorce proceedings. Nevertheless, the Tribunal considers that they would most likely have led him to divorce her had he remained in Iran and that this would have been an entirely foreseeable outcome for her family. The Tribunal is not satisfied that her family would have begun these actions had they been at all concerned to preserve her marriage and prevent the [respondent] divorcing her."

33 That is not a bare assertion that the respondent's account was "implausible". The reason there given for rejecting the respondent's claim that his wife's family had attacked and threatened him to induce him not to divorce his wife is that, on the respondent's own account, following the revelation of his wife's previous marriage and the breakdown of his marriage to her, his wife's family instituted various court proceedings to compel the respondent to pay maintenance and enable his wife to obtain the return of her dowry. The Tribunal's statement that they were not satisfied that the respondent's wife's family would have instituted those proceedings if they had been at all concerned to preserve the marriage was a rational deduction. So, too, was the Tribunal's statement that the fact of all the proceedings would most likely have encouraged the respondent to divorce his wife.

34 In paragraph 76 of their reasons, the Tribunal stated:

> "In this context, the Tribunal has also considered the claim that [the respondent's wife] plotted to have her brother ... marry the [respondent's] sister ... as a guarantee against the [respondent] divorcing her. The scheme is said to have been partly successful in that [the respondent's brother-in-law] established some form [of] relationship with the [respondent's] sister, giving her a mobile phone so they could communicate and, apparently meeting her at various times. He intended to advance things by luring her to his place of work and to rape her, thereby forcing her into a marriage but she was able to escape these unwelcome attentions. As put to the [respondent] at the hearing, this

> claim appears to the Tribunal inherently implausible. It also seems implausible that [the respondent's sister] could have had any interest in such a person, who is described by the [respondent] as a violent long-term abuser of methamphetamines and alcohol who had been jailed many times. Moreover, if the purpose was to prevent a divorce, the secret of [the respondent's wife's] first marriage must already have been known and the Tribunal finds it additionally implausible that [the respondent's sister] would associate herself with a family which had deceived her brother and her family in this way. Further, the Tribunal finds it implausible that such a relationship could have commenced and continued while [the respondent's sister], a girl only eighteen or nineteen, was still living with her parents. The Tribunal notes the [respondent's] explanation that [the respondent's wife] threatened, or possibly was able, to make [the respondent's sister] so emotionally dependent on [the respondent's brother-in-law] that she would commit suicide if she could not marry him but is not satisfied this could have occurred in the circumstances he describes."

35 That, too, is not a bare assertion that a claimed event was implausible. The respondent's claim that his wife plotted to have her brother rape and marry the respondent's sister as a guarantee against the respondent divorcing his wife is bizarre. And as the Tribunal observed, if the purpose of the alleged attempted rape and forced marriage of the respondent's sister were to dissuade the respondent from divorcing his wife, the secret of the respondent's wife's first marriage must already have been known; making it additionally implausible that the respondent's sister would associate herself with a family who she would have known had deceived her brother and her family by concealing the fact of the respondent's wife's first marriage. For the Tribunal so to observe was not "speculation" or "conjecture". It was to recognise that, when all these matters were taken together, the respondent's version of events so ill-accorded with the probabilities of ordinary human experience as to be implausible. It was upon that basis that the Tribunal concluded:

> "[T]he Tribunal accepts that the [respondent's] marriage broke down in 2013 after he discovered his wife had been married previously. The Tribunal also accepts that after the marriage failed, his relationship with her family became acrimonious, with allegations of deception and theft of property on his side and of domestic violence and failure to pay maintenance on hers. Both parties resorted to the courts and the Tribunal accepts that his wife's family were successful in a number of legal actions designed to recover goods and money from him. The Tribunal accepts that in his absence from Iran his wife's family have been unable to obtain settlement of further moneys awarded to them by the courts and that it is possible that he has been, or will be, found liable for the sum of 300 gold coins specified in the marriage contract.

> The Tribunal is, however, not satisfied as to the credibility of key parts of the [respondent's] evidence concerning the attitude of his wife's family toward him. It does not accept that his father-in-law or other members of the family have been motivated to harm him by religious fanaticism, a desire to prevent a divorce, a desire to keep secret his wife's first marriage or a fear that he would divulge information about his father-in-law's wrong-doing. The Tribunal does not accept there is any credible evidence that his wife's family ever took action to physically harm him or that they sought to go outside the sphere of the courts to seek restitution from him. For the same reason, the Tribunal does not accept that after he left Iran threats were made to his sister or other members of his family that he would be killed or that they themselves would be killed or harmed if he could not be found. Nor does the Tribunal accept there is any credible basis for his claim that he would be killed or otherwise harmed by his wife's family, or those acting for them including members of Sepah and the Basij, if he were to be returned to Iran."

36 Crulci J's criticisms of the Tribunal's reasons are unfounded.

Scope of the obligation to give reasons

37 What has been said thus far is sufficient to dispose of the appeal. Counsel for Nauru contended in the alternative, however, that, even if the Tribunal had not given full reasons for regarding the respondent's claims as implausible, the Tribunal's reasons would have satisfied the requirements of s 34(4) of the Refugees Act. Counsel referred in support of that contention to the judgment of McHugh J in *Re Minister for Immigration and Multicultural Affairs; Ex parte Durairajasingham*[11] regarding the extent of the obligation to give reasons under s 430(1) of the *Migration Act*.

38 In *Durairajasingham*, the applicant, who was a Sri Lankan citizen of Tamil ethnicity, challenged the findings of the Refugee Review Tribunal on the basis that inter alia the tribunal breached s 430(1) by failing to set out reasons for their finding that the applicant's claim that members of a Tamil party known as PLOTE tried to recruit him was "utterly implausible". McHugh J rejected[12] the challenge as follows:

> "[T]his was essentially a finding as to whether the [applicant] should be believed in his claim – a finding on credibility which is the function of the

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11 (2000) 74 ALJR 405; 168 ALR 407; [2000] HCA 1.

12 (2000) 74 ALJR 405 at 417 [67]; 168 ALR 407 at 423.

> primary decision maker par excellence. If the primary decision maker has stated that he or she does not believe a particular witness, no detailed reasons need to be given as to why that particular witness was not believed. The Tribunal must give the reasons for its decision, not the sub-set of reasons why it accepted or rejected individual pieces of evidence. In any event, the reason for the disbelief is apparent in this case from the use of the word 'implausible'. The disbelief arose from the Tribunal's view that it was inherently unlikely that the events had occurred as alleged."

39 McHugh J's approach in *Durairajasingham* was recently referred to by the Full Court of the Federal Court, in *CQG15 v Minister for Immigration and Border Protection*[13], as entirely orthodox. Even so, it is necessary to bear in mind that each case ultimately depends on its own facts and circumstances, and that what suffices in one case may not necessarily suffice in another. In this case, as has been seen, the Tribunal gave extensive reasons for regarding the respondent's claims as implausible. There can be no question that the Tribunal's reasons met the requisite standard.

Conclusion

40 It follows that the appeal should be allowed. The orders of the Supreme Court of Nauru should be set aside and in their place it should be ordered that the appeal to the Supreme Court be dismissed with costs. The respondent should pay the appellant's costs of the appeal to this Court.

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13 (2016) 253 FCR 496 at 509 [40].