



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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REHMAN SABIR,

G.R. No. 249387

*Petitioner,*

Present:

- versus -

DEPARTMENT OF JUSTICE-  
REFUGEES and STATELESS  
PERSONS PROTECTION UNIT  
(DOJ-RSPPU),

*Respondent.*

GESMUNDO, C.J.,  
LEONEN,  
CAGUIOA,  
HERNANDO,  
LAZARO-JAVIER,\*  
INTING,  
ZALAMEDA,  
LOPEZ, M. V.,  
GAERLAN,  
ROSARIO,  
LOPEZ, J. Y.,  
DIMAAMPAO,  
MARQUEZ,  
KHO, JR.,\* and  
SINGH,\* JJ.

Promulgated:

August 2, 2022

[Signature]

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**DECISION**

**ZALAMEDA, J.:**

Fear is an unpleasant emotion inherently personal to an individual. Indeed, we can never profess to know for a fact the intensity and depth of a person's fear. However, this is the heavy task brought upon us by a person

\* No part due to prior participation.

[Signature]

who claims to have fled his home country due to his fear that his religious belief will cost him his life. Confronted with the determination of the petitioner's refugee status, the Court will be guided by this precept: while the State strives to uphold its commitment to protect displaced persons uprooted from their countries as a result of persecution, it must first determine if a person requesting its protection satisfies the criteria provided under the definition of a refugee in the 1951 Convention Relating to the Status of Refugees, i.e., a well-founded fear of persecution.

In cases for refugee status determination, there is a shared and collaborative burden between the applicant and the protection officer. While the applicant has the duty to provide an accurate, full, and credible account or proof of his or her case, the protection officer is expected to provide assistance in clarifying and understanding the applicant's claims. Likewise, in carrying out status determination, the protection officer must consider the subjective and objective elements of the applicant's claim of well-founded fear of persecution. Thereafter, the protection officer must determine whether the applicant has established to a reasonable degree a risk of persecution.

### The Case

Assailed in this Petition for Review on *Certiorari*<sup>1</sup> (petition) is the Decision<sup>2</sup> dated 31 January 2019 and Resolution<sup>3</sup> dated 10 September 2019 promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 153799 affirming the Decisions dated 10 March 2017<sup>4</sup> and 25 May 2017<sup>5</sup> of the Secretary of Justice, through the Department of Justice – Refugees and Stateless Persons Protection Unit (DOJ-RSPPU).

### Antecedents

The following are petitioner's allegations, as summarized by DOJ-RSPPU and cited by the CA in the assailed Decision, to wit:

<sup>1</sup> *Rollo*, pp. 13-22.

<sup>2</sup> *Id.* at 34-56; penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court) and concurred in by Associate Justices Remedios A. Salazar-Fernando and Marie Christine Azcarraga-Jacob.

<sup>3</sup> *Id.* at 58-60; penned by Associate Justice Marie Christine Azcarraga-Jacob, and concurred in by Associate Justices Remedios A. Salazar-Fernando and Maria Filomena D. Singh (now a Member of this Court).

<sup>4</sup> *Id.* at 101-107; penned by Ricardo V. Paras III, Chief State Counsel and Head, RSPPU.

<sup>5</sup> *Id.* at 115-119; penned by Ricardo V. Paras III, Chief State Counsel and Head, RSPPU.



The Applicant Rehman Sabir is a Pakistani national seeking protection as a refugee under the 1951 Convention Relating to the Status of Refugees on account of alleged religious persecution.

His claim to refugee status has been examined within the context of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol ("1951 Convention").

#### CLAIMS and EVIDENCE

The following account is based on Applicant's application and interview:

1. Applicant is a Pakistani national born on 8 July 1994, in Lahore, Pakistan to a Christian family. Applicant's father is Sabir Ehsan Khokhar. His step-mother is Saira Sabir. His birth mother died when he was younger. Applicant has an older brother, Roni Sabir, and a two-year old half-sister, Daneen Sabir. About five years ago, his father converted his religion from Christian to Muslim and married Saira Sabir, his step-mother, a Muslim. Sometime thereafter, his step-mother moved in with them.
2. His father works at Punjab Automobile Services while his step-mother is a professor of Islamic Studies.
3. Applicant studied and finished only up to 10<sup>th</sup> grade at St. Peter's School in Lahore, Pakistan. He was not able to pursue higher education due to high costs.
4. The applicant had never worked. He claims that no one in his country gives Christians work.
5. Initially, Saira Sabir was kind to him and his brother. It was never mentioned that Saira Sabir is a Muslim neither was it mentioned that his father had already converted to Muslim. The Applicant only found out when he saw his step-mother praying and reading the Quran. About one (1) month after finding out that their step-mother is a Muslim his brother left the house. His brother warned him that it is not good for them to live with a Muslim and urged him to leave as well. This is also around the time they found out that their father had converted to Muslim.
6. Saira Sabir's brother, Raja, is a "Mulana" (preacher) at the Mosque. He visits them about two or three times a week. Raja persuades him to convert to Muslim every time he visits. Raja's methods were initially acceptable but became aggressive as time went by.
7. Sometime after Christmas in 2016, Saira Sabir and Raja forced him to read the Quran. According to the Applicant, Raja was handing him the Quran but he refused to accept it and that while he was being forced to accept the Quran, the Quran accidentally dropped. Raja said that the Applicant insulted the Quran and is (sic) that he is now dead. Raja



then grabbed a knife from the kitchen. This prompted the Applicant to run away. On that same day, the Applicant ran away from his home bringing nothing.

8. The Applicant said that he called his house after the incident to talk to his father. However, his father refused to hear his explanation of the incident and told him that he, his father, cannot do anything about it.
9. According to the Applicant, anyone who is accused of insulting the Quran in Pakistan can be criminally charged with section 295-C of their criminal laws, a Blasphemy law, the penalty of which is death. Further, the Applicant had stated that as soon as he is accused of insulting the Quran he was already in danger of being killed. He explained that this accusation will be reported to the local Muslim community and that the community will likely gang up on him to kill him. The Applicant further stated that the Government cannot do anything about it.
10. After the incident, the Applicant slept at a friend's house for a few days until he was referred to a Non-Governmental Organization ("NGO") in Pakistan named "Save and Serve Christ". This NGO helped the Applicant to get to the Philippines for the purpose of seeking asylum.
11. The Applicant arrived in the Philippines on 2 February 2017 and applied for refugee status on 8 February 2017. This is the first time that the Applicant had gone out of Pakistan.
12. The Applicant explained that he does not want to return to Pakistan because he will be killed if he does return.<sup>6</sup>

### **Ruling of the Secretary of Justice**

On 10 March 2017, the Secretary of Justice, through the DOJ-RSPPU, issued a Decision denying petitioner's application, thus:

**WHEREFORE**, in view of the foregoing, **REHMAN SABIR** is **NOT** a **REFUGEE** within the context of the 1951 Refugee Convention.

**SO ORDERED.**<sup>7</sup>

The DOJ-RSPPU concluded that petitioner is not a refugee within the meaning of the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention). It was stated that, while Christians in Pakistan are a religious minority suffering discrimination in general, being a Christian is not sufficient to amount to a risk of persecution. Christians are able to

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<sup>6</sup> Id. at 35-37.

<sup>7</sup> Id. at 107.

practice their faith, attend church, and have their own schools and hospitals. Risk of blasphemy allegations is generally not enough to make out a claim under the Refugee Convention, unless there is evidence that the charge is pursued. Based on petitioner's allegations, there was no persecution due to his religion.<sup>8</sup>

Petitioner's Motion for Reconsideration was later denied through a Decision<sup>9</sup> dated 25 May 2017. The DOJ-RSPPU took note of petitioner's answer during the interview where petitioner answered that he was neither forced nor compelled to change religion; he was merely persuaded.<sup>10</sup>

### **Ruling of the CA**

Petitioner elevated the matter *via* a Petition for Review under Rule 43 with the CA. In its Decision<sup>11</sup> dated 31 January 2019, the CA dismissed the Petition for Review filed by petitioner, *viz*:

**ACCORDINGLY**, the petition is **DISMISSED** for lack of merit.

**SO ORDERED.**<sup>12</sup>

The appellate court found that the DOJ-RSPPU, in representation of the Secretary of Justice, has the special knowledge and expertise in the determination of refugee status of a person. Its factual findings are generally accorded great respect, if not finality, by the courts. A review of the Decisions of the DOJ-RSPPU shows that it took cognizance of petitioner's submissions and carefully evaluated his case. Since the findings in this case are supported by substantial evidence, the CA concluded that there is no reason to overturn the decision of the DOJ-RSPPU.<sup>13</sup>

In its Resolution<sup>14</sup> dated 10 September 2019, the CA denied the Motion for Reconsideration of petitioner. Thus, petitioner elevated the matter to the Court through this Petition which raised the lone issue:

Whether the CA gravely erred in affirming the DOJ-RSPPU's denial of petitioner's application for recognition as refugee, despite substantial evidence showing petitioner's qualification under Department Circular No. 058 in relation to the 1951 United Nations Convention Relating to the

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<sup>8</sup> Id. at 104-106.

<sup>9</sup> Id. at 115-119.

<sup>10</sup> Id. at 116.

<sup>11</sup> *Supra* note 2.

<sup>12</sup> Id. at 55.

<sup>13</sup> Id. at 43-55.

<sup>14</sup> Id. at 58-60.

Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

### Issue

The primordial issue for resolution of the Court is whether the CA erred in affirming the Decision of the DOJ-RSPPU declaring that petitioner is not a refugee.

### Ruling of the Court

The petition is partly granted.

Refugee protection has been an ongoing global concern. Characterizing the refugee problem as perennial, Dr. Gerrit Jan van Heuven Goedhart, the first United Nations High Commissioner for Refugees (UNHCR), articulated that “[s]o long as the world remains split in half and over the face of the earth there are frontiers dividing systems based on freedom from systems based on compulsion, men and women living under the latter will cross over to the lands where freedom reigns, and so become ‘refugees’”.<sup>15</sup> As predicted, the UNHCR, the refugee agency of the United Nations, recorded 26.6 million refugees as of mid-2021 with most of them hosted in developing countries.<sup>16</sup> With the already staggering number, a refugee crisis looms as one million refugees have reportedly fled Ukraine with the recent conflict with Russia.<sup>17</sup> In response, the Philippines expressed its commitment to welcome refugees in the country.<sup>18</sup> This commitment continues the country’s long history of providing safe haven to refugees, with 795 hosted herein as of 18 January 2021.<sup>19</sup>

<sup>15</sup> Speech made by Dr. Gerrit Jan van Heuven Goedhart, United Nations High Commissioner for Refugees, at the meeting of Swiss Aid to Europe held in Berne, on 19 February 1953, available at: <<https://www.unhcr.org/admin/hcspeeches/3ae68fb630/speech-made-dr-gerrit-jan-van-heuven-goedhart-ukited-nations-high-commissioner.html>> (visited 25 July 2022).

<sup>16</sup> UNHCR Refugee Data Finder, available at <<https://www.unhcr.org/refugee-statistics/>> (last accessed on 22 April 2022). Based on the data from UNHCR, 39% of the refugee population are hosted in Turkey, Colombia, Uganda, Pakistan, and Germany.

<sup>17</sup> See <<https://data2.unhcr.org/en/situations/ukraine>>; <<https://www.aljazeera.com/news/2022/3/3/1-million-refugees-flee-ukraine-in-week-since-russian-invasicn>> (visited 22 April 2022).

<sup>18</sup> Philippines to welcome Ukrainian refugees – DOJ, available at <<https://www.philstar.com/headlines/2022/03/03/2164637/philippines-welcome-ukrainian-refugees-doj>> (visited 22 April 2022).

<sup>19</sup> UHNCR Fact Sheet – Philippines, available at <<https://reporting.unhcr.org/sites/default/files/UNHCR%20Philippines%20fact%20sheet%20January%202021.pdf>> (visited 22 April 2022).

*The Philippines' Humanitarian Tradition*

The UNHCR has recognized the Philippines' strong humanitarian tradition as exemplified in the so-called *nine waves of refugees*.<sup>20</sup> Classified according to nationality, these waves overlapped and moved with the political upheavals of the times.

In October 1922, at the end of World War I, the *first wave* consisted of 800 "White Russians" who fled persecution from "Red Russians" or supporters of the 1917 Socialist Revolution. They wandered the seas to look for a safe port before eventually arriving in Manila. Some of the White Russians stayed in the Philippines while others resettled in the United States and Australia.<sup>21</sup>

The *second wave* consisted of European Jewish refugees fleeing Nazi persecution. President Manuel L. Quezon admitted 1,200 refugees in 1934, and up to 30,000 in 1937. This second wave also became the basis for the issuance of Commonwealth Act No. 613 (CA 613), or the Philippine Immigration Act of 1940.<sup>22</sup>

Following this, the *third wave* was composed of Spanish republicans fleeing from the new nationalist government at the end of the Spanish Civil War in 1939. The Philippines was among the few countries who granted visas to the Spanish refugees.<sup>23</sup>

About 30,000 Chinese refugees also sought refuge in the Philippines in the same period. This *fourth wave* was comprised of Kuomintang members who wished to evade the grasp of the communist People's Republic of China.<sup>24</sup> The number of refugees who settled in Manila, Baguio, the Province of Rizal, and the Mountain Province were such that in 1937, President Quezon, through Proclamation No. 173, asked for the cooperation of every inhabitant of the Philippines in "extending whatever aid may be necessary for the safety and care of these refugees."<sup>25</sup> He also prohibited, for this purpose, the raise in house rentals and prices of foodstuff and other prime necessities.

President Elpidio Quirino welcomed the *fifth wave* from 1949 to 1953. A second wave of 6,000 White Russians from Shanghai, China found refuge

<sup>20</sup> Laurice Peñamante, *Nine Waves of Refugees in the Philippines*, available at <<https://www.unhcr.org/ph/11886-9wavesrefugees.html>> (visited 22 April 2022).

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Proclamation No. 173, 21 August 1937.

in a camp in Tubabao Island, Guian, Eastern Samar. They eventually resettled in countries like Australia, the United States, Brazil, Dominican Republic, France, and Belgium.<sup>26</sup>

From 1975 to 1992, the *sixth wave* of refugees came from Vietnam and arrived in the Philippines. These refugees lived in the refugee processing center in Palawan before relocating to other countries such as Canada. Some opted to stay in the Philippines.<sup>27</sup>

The *seventh wave* was composed of Iranian students who chose to remain in the Philippines in the aftermath of the Iranian revolution at the close of the 1970s. The Iranian refugees remained in the Philippines either by integrating into the local Muslim community or by marrying Filipinos and undergoing naturalization.<sup>28</sup>

From 1980 to 1994, the *eighth wave* was made up of 400,000 refugees from Laos, Cambodia, and Vietnam. They were admitted and then processed for relocation to other countries like the United States, Canada, France, and Australia.<sup>29</sup> The Philippine Government entered into an agreement with the UNHCR on 12 November 1979 for the establishment of refugee processing centers.<sup>30</sup>

Most recently, the *ninth wave* of refugees was made up of 600 East Timorese who fled their country during its struggle for independence from Indonesia. They were repatriated after security was restored in their country.<sup>31</sup>

Verily, the foregoing demonstrates the historical tradition and commitment of the Philippines to provide a safe haven for those who have left their homes due to wars, conflicts, discrimination, and persecution.

*International Framework on Refugees  
and Stateless Persons: The 1951  
Refugee Convention and 1967  
Protocol*

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<sup>26</sup> Supra, note 18.

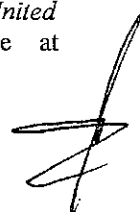
<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> UN High Commissioner for Refugees (UNHCR), *Agreement under the Programme of the United Nations High Commissioner for Refugees Philippines*, 12 November 1979, available at <<https://www.refworld.org/docid/3ee6f89b4.html>> (visited 22 April 2022).

<sup>31</sup> Supra, note 25.





The 1951 Refugee Convention consolidated various international agreements to address the problem of the legal status of refugees after the Second World War, and to lay down minimum standards for the treatment of refugees without prejudice to the grant of a more favorable treatment by acceding States. It is founded on Article 14(1) of the Universal Declaration of Human Rights, which recognizes the right of persons to seek and to enjoy in other countries asylum from persecution.<sup>32</sup> The 1967 Protocol amended the 1951 Refugee Convention by removing its geographical and temporal limits. In 2001, States parties issued a Declaration reaffirming their Commitment to the 1951 Refugee Convention and 1967 Protocol.<sup>33</sup>

Under the 1951 Refugee Convention, the term “refugee” under is defined as a person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>34</sup>

The 1951 Refugee Convention and the 1967 Protocol define who is a refugee, but do not specifically regulate the identification or determination of refugee status. States parties to the Convention and to the Protocol are left to establish the procedure they consider most appropriate, having regard to their respective constitutional and administrative structures.<sup>35</sup> In view of the varying procedures for refugee status determination among States parties, the Executive Committee of the High Commissioner’s Programme recommended that procedures satisfy certain basic requirements:


- (i) The competent official (e.g., immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State should have clear instructions for dealing with cases which might come within the purview of the relevant international instruments. He should be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority.

<sup>32</sup> Universal Declaration of Human Rights, available at <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> (visited 22 April 2022).

<sup>33</sup> Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, available at <<https://www.unhcr.org/protection/globalconsult/3c2306cc4/declaration-states-parties-1951-convention-and-or-its-1967-protocol-relating.html>> (visited 22 April 2022). This was adopted on 13 December 2001 in Geneva at the Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees.

<sup>34</sup> Article 1(A)(2), 1951 Convention Relating to the Status of Refugees, available at <<https://www.unhcr.org/5d9ed32b4>> (visited 22 April 2022).

<sup>35</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection: Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, February 2019 (hereinafter, UNHCR Handbook), p. 42, par. 189, available at <<https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>> (visited 22 April 2022).



(ii) The applicant should receive the necessary guidance as to the procedure to be followed.

(iii) There should be a clearly identified authority – wherever possible a single central authority – with responsibility for examining requests for refugee status and taking a decision in the first instance.

(iv) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.

(v) If the applicant is recognized as a refugee, he should be informed accordingly and issued with documentation certifying his refugee status.

(vi) If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.

(vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.<sup>36</sup>

Corollary to this, the UNHCR summarized the process of ascertaining and evaluating the facts as follows:

(a) The *applicant* should:

(i) Tell the truth and assist the examiner to the full in establishing the facts of his case.

(ii) Make an effort to support his statements by any available evidence and give a satisfactory explanation for any lack of evidence. If necessary he must make an effort to procure additional evidence.

(iii) Supply all pertinent information concerning himself and his past experience in as much detail as is necessary to enable the examiner to establish the relevant facts. He should be asked to give a coherent explanation of all the reasons invoked in support of his application for refugee status and he should answer any questions put to him.

(b) The *examiner* should:

<sup>36</sup> UNHCR Handbook, p. 43, par. 192; Official Records of the General Assembly, Thirty second Session, Supplement No. 12 (A/32/12/Add.1), para. 53 (6) (e), available at <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N77/214/08/PDF/N7721408.pdf?OpenElement>> (visited 22 April 2022).

- (i) Ensure that the applicant presents his case as fully as possible and with all available evidence.
- (ii) Assess the applicant's credibility and evaluate the evidence (if necessary giving the applicant the benefit of the doubt), in order to establish the objective and the subjective elements of the case.
- (iii) Relate these elements to the relevant criteria of the 1951 Convention, in order to arrive at a correct conclusion as to the applicant's refugee status.<sup>37</sup>

*The Philippines' International  
Commitments and Issuances Relating  
to Refugees and Stateless Persons*

As demonstrated earlier, the Philippines has already admitted refugees and incorporated in its immigration law a favorable treatment to refugees, even prior to accession to any international convention on the protection of refugees. Section 47(b) of CA 613, as amended, allows the admission of aliens "for humanitarian reasons, and when not opposed to the public interest, xxx who are refugees for religious, political, or racial reasons."

The Philippines is also among the few countries in the Asia Pacific region which acceded to the 1951 Refugee Convention and its 1967 Protocol on 22 July 1981.<sup>38</sup> By accession to the 1967 Protocol, the Republic undertook to apply the substantive provisions of the 1951 Refugee Convention to refugees as defined in said Convention but without the 1951 dateline.<sup>39</sup>

By reason of the above commitments, the DOJ, through DOJ Department Circular No. 058-12<sup>40</sup> (DOJ Circular No. 058-12), created the DOJ-RSPPU to facilitate the identification, determination and protection of refugees and stateless persons under the terms of the 1951 Refugee Convention, the 1967 Protocol, and the 1954 United Nations Convention.<sup>41</sup> The DOJ acted pursuant to Letter of Implementation No. 47 dated 18 August 1976, where then Pres. Ferdinand E. Marcos delegated to the DOJ the authority over immigration matters, including the admission of aliens. The

<sup>37</sup> UNHCR Handbook, par. 205, p. 45.

<sup>38</sup> Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review: 3<sup>rd</sup> Cycle, 27<sup>th</sup> Session, available at <<https://www.refworld.org/pdfid/591984589.pdf>> (last accessed on 22 April 2022); 1951 Convention Relating to the Status of Refugees, available at <<https://www.unhcr.org/5d9ed32b4>> (visited 22 April 2022). The Philippines also signed the 1954 Convention on the Status of Stateless Persons on 22 June 1955 and ratified it on 22 September 2011. See <[https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-3&chapter=5&Temp=mtdsg2&clang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=en)> (visited 22 April 2022).

<sup>39</sup> UNHCR Handbook, pp. 13-14, pars. 7-9.

<sup>40</sup> ESTABLISHING THE REFUGEES AND STATELESS STATUS DETERMINATION PROCEDURE. Approved: 18 October 2012.

<sup>41</sup> DOJ Department Circular No. 058-12, Sec. 5.

creation of the DOJ-RSPPU also finds basis under Section 7,<sup>42</sup> Title III of the Administrative Code of 1987, allowing the Legal Staff of the DOJ to perform such functions as may be assigned by the Secretary of Justice.

The Philippines' continuing commitment towards streamlining the provision of services for refugees is further evidenced by the Inter-Agency Agreement on the Protection of Asylum Seekers, Refugees, and Stateless Persons. Signed on 12 October 2017, the Agreement involved the DOJ, this Court, the Department of Education, the Department of Labor and Employment, the Department of Health, the Department of Trade and Industry, the Department of Social Welfare and Development, the Department of the Interior and Local Government, the Technical Education and Skills Development Authority, the Bureau of Immigration, the Public Attorney's Office, the Commission on Higher Education, the Philippine Charity Sweepstakes Office, the Philippine Health Insurance Corporation, and the Professional Regulation Commission.<sup>43</sup>

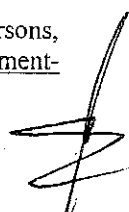
In recognition of the need for an evolving national legal and operational framework for refugees, there have been notable efforts on the part of Congress to establish an exhaustive system and a uniform set of standards for status determination of refugees and stateless persons. During the 18<sup>th</sup> Congress, Senate Bill No. 379 and House Bill No. 3425 were filed, seeking to fill the gaps in our existing legal framework by legislating a determination procedure for refugees and stateless persons as well as a central authority in matters relating thereto. Quite recently, Executive Order No. 163, s. 2022 was promulgated to institutionalize access to protection services for refugees, stateless persons, and asylum seekers.

On the part of the judiciary, the Court approved on 15 February 2022 Administrative Matter No. 21-07-22, or the *Rule on Facilitated Naturalization of Refugees and Stateless Persons*, providing a simplified and expedited procedure for petitions for naturalization of refugees and stateless persons.

<sup>42</sup> SECTION 7. Legal Staff . — The Legal Staff shall have the following functions:

- (1) Assist the Secretary in the performance of his duties as Attorney General of the Philippines and as *ex-officio* legal adviser of government-owned or controlled corporations or enterprises and their subsidiaries;
- (2) Prepare and finally act for and in behalf of the Secretary on all queries and/or requests for legal advice or guidance coming from private parties, and minor officials and employees of the government;
- (3) Maintain and supervise the operation of the Department Law Library as well as its personnel; and
- (4) Perform such other functions as are now or may hereafter be provided by law or assigned by the Secretary.

<sup>43</sup> See Ph Gov't Agencies Sign Agreement to Protect Asylum Seekers, Refugees and Stateless Persons, available at <<https://dfa.gov.ph/dfa-news/dfa-releasesupdate/14318-ph-gov-t-agencies-sign-agreement-to-protect-asylum-seekers-refugees-and-stateless-persons>> (visited 22 April 2022).



*The refugee determination procedure  
before the DOJ-RSPP pursuant to  
DOJ Department Circular No. 058-  
12*

It bears reiterating that the procedure for the determination of refugee status was not provided under international refugee instruments. The same has been left to the contracting states who will ultimately assess and determine if the applicant is a refugee as defined under the 1951 Refugee Convention.<sup>44</sup>

As previously stated, the determination procedure is laid out in DOJ Circular No. 058-12. Section 2, Article I thereof describes the proceeding as non-adversarial, which is intended to facilitate identification, treatment, and protection of refugees. Article II provides the details of the procedure, including, but not limited to, the application, the suspensive effect of the application in relation to deportation, exclusion, or release in case of detention, the priority of refugee status determination, burden of proof, interview, decision, and the appeals process.

It is readily discernible that this type of proceeding is *sui generis*. It belongs to a class by itself, which is neither purely civil nor criminal in nature. It is a status determination process which may result in the recognition of the refugee status of an applicant, thus enabling such person to enjoy and exercise rights and privileges accorded by the 1951 Refugee Convention,<sup>45</sup> the most enduring of which is naturalization.<sup>46</sup> Notably, the Court has previously characterized cases involving issues on citizenship as *sui generis*.<sup>47</sup>

The importance of determination proceedings cannot be overemphasized. The recognition of refugee status gives rise to a bundle of rights,<sup>48</sup> including the right to residence, entitlement to appropriate visas and other immigration documents, and other rights and privileges accorded by the Convention. On the other hand, if the application is denied with finality, the applicant is afforded sufficient time to leave the country unless he or she holds another immigration status or his or her continued stay is authorized.<sup>49</sup>

<sup>44</sup> UNHCR Handbook p. 42, par. 189; UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, p. 1, available at <<https://www.refworld.org/pdfid/3ae6b3338.pdf>> (visited 22 April 2022).

<sup>45</sup> DOJ Department Circular No. 058-12, Article II, Sec. 15.

<sup>46</sup> 1951 Refugee Convention, Chapter V, Article 34.

<sup>47</sup> See *Go v. Bureau of Immigration and Deportation*, 761 Phil. 223 (2015), and *Go, Sr. v. Ramos*, 614 Phil. 451 (2009). These cases involve deportation proceedings where citizenship was raised as an issue.

<sup>48</sup> DOJ Department Circular No. 058-12, Article II, Sec. 15.

<sup>49</sup> *Id.* at Article II, Sec. 14.

Further, the *sui generis* nature of refugee determination cases is more pronounced when We consider the concept of shared burden of proof. This peculiar concept is provided under DOJ Circular No. 058-12, thus:

SECTION 9. *Burden of Proof.* – The responsibility of proving a claim to refugee or stateless status is a shared and collaborative burden between the Applicant and the Protection Officer.

The Applicant has the obligation to provide accurate, full and credible account or proof in support of his/her claim, and submit all relevant evidence reasonably available.

A finding that the Applicant is a refugee is warranted where he or she has met the definition of the refugee. xxxx

The shared and collaborative burden means that the protection officer, who is a DOJ-RSPPU officer, should actively assist and help the applicant clarify his or her claims and allegations in support of the application. This assistance could be in the form of helping elucidate the claims of the applicant, requesting the Department of Foreign Affairs (DFA) to contact foreign States,<sup>50</sup> providing the applicant with translation services,<sup>51</sup> and extending assistance in gathering evidence in support of the application, among others. The shared burden of proof is in recognition of the possibility that some applicants may have left their country in haste, and as such, may not have any evidence to prove their claims. Moreover, there may be other factors which may hinder applicants from fully discussing their allegations, including language barriers and personality differences. In these cases, the protection officer is expected to assist and help the applicant clarify his or her account.

Meanwhile, the applicant must provide accurate, full, and credible account or proof in support of his or her claim. The applicant must also submit relevant evidence reasonably available. After all, the substantive basis for the application will come from the applicant.

The foregoing finds support in UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection* (UNHCR Handbook), which, although not binding upon state parties, may serve as a guide for decision-makers, thus:

195. The relevant facts of the individual case will have to be furnished in the first place by the applicant himself. It will then be up to the person charged with determining his status (the examiner) to assess the validity of any evidence and the credibility of the applicant's statements.

<sup>50</sup> Id. at Article VII, Sec. 31.

<sup>51</sup> Id.

196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his [or her] statements by documentary or other proof, and cases in which an applicant can provide evidence of all his [or her] statements will be the exception rather than the rule. In most cases a person fleeing from prosecution will have arrived with the barest necessities and very frequent even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.<sup>52</sup>

In its *Note on the Burden and Standard of Proof* dated 16 December 1998, the UNHCR explained that the shared burden of the examiner or adjudicator is discharged by "being familiar with the objective situation in the country of origin concerned, being aware of relevant matters of common knowledge, guiding the applicant in providing the relevant information and adequately verifying facts alleged which can be substantiated."<sup>53</sup>

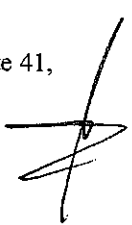
Thus, due to the shared burden between the applicant and the protection officer, the latter assumes a more active role in ascertaining the truth. The protection officer shares the responsibility of untangling inconsistencies and contextualizing the applicant's claims. The Handbook elucidates, thus:

199. While an initial interview should normally suffice to bring an applicant's story to light, it may be necessary for an examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview, and to find an explanation for any misrepresentation or concealment of material facts. Untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.

200. An examination in depth of the different methods of fact-finding is outside the scope of the present Handbook. It may be mentioned, however, that basic information is frequently given, in the first instance, by completing a standard questionnaire. Such basic information will normally not be sufficient to enable the examiner to reach a decision, and one or more personal interviews will be required. It will be necessary for the examiner to gain the confidence of the applicant in order to assist the latter in putting forward his case and in

<sup>52</sup> UNHCR Handbook, p. 43, pars. 195-196.

<sup>53</sup> UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, supra, note 41, p. 2.



fully explaining his opinions and feelings. In creating such a climate of confidence it is, of course, of the utmost importance that the applicant's statements will be treated as confidential and that he be so informed.<sup>54</sup>

The foregoing neither controls nor limits the discretion of the DOJ-RSPPU in status determination proceedings. Rather, We lift these passages from the Handbook to highlight the difference between ordinary administrative or quasi-judicial proceedings, on the one hand, and cases for recognition of refugee status, on the other. In the latter, the DOJ-RSSPU acts not only as an adjudicator. The protection officer is expected to assist and collaborate with the applicant in presenting the latter's claims and allegations and in gathering supporting evidence. At the same time, the protection officer is also expected to maintain a certain level of objectivity to determine and assess whether a finding of refugee status is warranted. After all, the protection officer has a duty to "evaluate the application or the request for reconsideration and eligibility of protection after considering all relevant evidence."<sup>55</sup> The shared and collaborative burden on the part of the protection officer does not mean that it is the latter's duty to ensure the grant of the application.

*The determination of refugee status will primarily require an evaluation of the applicant's statements. Nonetheless, the allegations of the applicant must be contextualized based on the situation prevailing in his or her country of origin*

As a matter of procedure, the UNHCR Handbook provides two stages in the determination of refugee status: (1) the determination of the relevant facts of the case; and (2) the application of the facts ascertained to the definition of refugee under the 1951 Refugee Convention and the 1967 Protocol.<sup>56</sup>

This two-step process necessitates the assessment of the credibility of the claims and allegations of the applicant, as well as the evidence and documents presented in support of the application. The protection officer should make the assessment while assisting the applicant in clarifying and explaining his or her claims as may be required. The facts ascertained should

<sup>54</sup> UNHCR Handbook, p. 44, pars. 199 and 200.

<sup>55</sup> DOJ Department Circular No. 058-12, Article VII, Sec. 31.

<sup>56</sup> UNHCR Handbook, p. 17, par. 18.



then be measured against the definition of a refugee under the 1951 Refugee Convention and DOJ Circular No. 058-12.

As regards the definition of the phrase “well-founded fear of being persecuted,” which is the most essential phrase in the definition of a refugee, the UNHCR Handbook specifies the subjective and objective elements of the said phrase, to wit:

xxx Since fear is subjective, the determination involves a subjective element in the person applying for recognition as a refugee. **Determination of refugee status will therefore primarily require an evaluation of the applicant’s statements rather than a judgement on the situation prevailing in his country of origin.**

38. To the element of fear – a state of mind and a subjective condition – is added the qualification “well-founded”. This implies that it is not only the frame of mind of the person concerned that determines his refugee status, but that **this frame of mind must be supported by an objective situation**. The term “well-founded fear” therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration. (Emphasis supplied.)

Anent the subjective element, the UNHCR Handbook explains:

Due to the importance that the definition attaches to the subjective element, an assessment of credibility is indispensable where the case is not sufficiently clear from the facts on record. It will be necessary to take into account the personal and family background of the applicant, his [or her] membership of a particular racial, religious, national, social or political group, his [or her] own interpretation of his situation, and his [or her] personal experiences – in other words, everything that may serve to indicate that the predominant motive for his [or her] application is fear.<sup>57</sup>

As regards the objective element, the UNHCR Handbook clarifies that, while not a primary objective, it is necessary to consider the conditions in the country of origin in order to assess the credibility of the applicant, thus:

[I]t is necessary to evaluate the statements made by the applicant. The competent authorities that are called upon to determine refugee status are not required to pass judgement on conditions in the applicant’s country of origin. The applicant’s statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. **A knowledge of conditions in the applicant’s country of origin –while not a primary objective – is an important element in assessing the applicant’s credibility.** In general, the applicant’s fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become

<sup>57</sup> UNHCR Handbook, p. 19, par. 41.

intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.<sup>58</sup> (Emphasis supplied.)

In sum, the protection officer has to assess and determine the credibility of the applicant by considering his or her statements, the evidence presented, if any, and the applicant's demeanor and responses to questions and clarifications propounded. The protection officer should also consider the objective situation in the country of origin of the applicant.

*The threshold for the determination of refugee status is whether the applicant can establish, to a reasonable degree, that he or she would have been persecuted had the applicant not left his or her country of origin, or would be persecuted if the applicant returns thereto*

The 1951 Refugee Convention and the 1967 Protocol did not specify any threshold of evidence to warrant a finding that an applicant is a refugee. There is likewise no specific mention of a quantum of proof in DOJ Circular No. 058-12. In relation to Section 9, Article II, however, it is provided that a finding of refugee status is warranted where the applicant has met the definition of a refugee. The definition referred to is a substantial reproduction of the definition of a refugee under the 1951 Refugee Convention and the 1967 Protocol, thus:

SECTION 1. *Definition of Terms.* – xxx

d. "Refugee" is a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence".

On the basis of the definition of the term refugee, as well as the humanitarian nature of the Refugee Convention and the Protocol, We determine the necessary parameters and quantum of proof in the refugee status determination process in the Philippines.

<sup>58</sup> Id. at 19-20, par. 42.

The most important element of the definition is the existence of a “well-founded fear” of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. While the definition uses the phrase “well-founded fear,” this cannot be taken to mean proof beyond reasonable doubt as required in criminal cases. To require such a high threshold will be contrary to the humanitarian purpose of the convention, and the acknowledgment that there may be no other evidence available to the applicant, especially if he or she had to immediately leave the country of origin.

As such, We hold that there is a “well-founded fear of being persecuted” if the applicant can establish, to a **reasonable degree**, that he or she would have been persecuted had the applicant not left his or her country of origin, or would be persecuted if the applicant returns thereto. So, decision-makers would have to answer the question: “Is there a reasonable chance that the applicant would have been persecuted had he or she not departed from his or her country of origin, or would be persecuted upon return to his or her country?”

The term “reasonable degree” as a threshold of evidence is consistent with that laid out under DOJ Circular No. 058-12 as regards the determination of the stateless status of a person, thus:

SECTION 9. *Burden of Proof*. – xxx

The finding that the Applicant is stateless is warranted where it is established to a **reasonable degree** that he or she is not considered a national by any State under the operation of its laws. This involves the examination of the nationality laws of the country with which the Applicant has relevant link (by birth, descent, marriage or habitual residence).<sup>59</sup>

The reasonable degree threshold further finds support in the UNHCR Handbook, which states that, in general, the applicant’s fear should be considered wellfounded if he or she can establish, to a **reasonable degree**, that his or her continued stay in his country of origin has become intolerable for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.<sup>60</sup>

Other jurisdictions have also provided their interpretations of quantum of proof in their respective refugee determination processes.

In *INS v. Cardoza-Fonseca*,<sup>61</sup> the SCOTUS ruled that the requirement of fear of persecution being “well-founded” does not alter the focus on the

<sup>59</sup> Emphasis supplied.

<sup>60</sup> Id. at 19-20, par. 42.

<sup>61</sup> 480 U.S. 421 (1987).

individual's subjective beliefs, nor does it transform the standard into a "more likely than not" one. One can have a well-founded fear of an event happening when there is less than a 50% chance of the occurrence taking place. In interpreting the definition of "refugee," the SCOTUS made reference to the UNHCR Handbook and stated that the applicant's fear should be considered well-founded if he can establish, to a **reasonable degree**, that his continued stay in his or her country of origin has become intolerable for the reasons stated in the definition, or would for the same reasons be intolerable if he or she returned there. So long as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution; it is enough that persecution is a reasonable possibility.

The House of Lords of United Kingdom, in *Fernandez v. Government of Singapore and Others*,<sup>62</sup> rejected the use of the "balance of probabilities" test, which is similar to a "more likely than not" determination. It was elucidated that the mentioned test cannot find application as "there is no general rule of English law that when a court is required to take account of what may happen in the future and to base legal consequences on the likelihood of its happening, it must ignore any possibility of something happening merely because the odds on its happening are fractionally less than evens." As a matter of common sense and humanity, the decision must depend on the gravity of the consequences of permitting, as opposed to refusing, the return of the individual to his or her country. A lesser degree of likelihood that the individual will face detention or restriction should be sufficient (*i.e.*, **reasonable chance**, substantial grounds for thinking, a serious possibility).

In *Joseph Adjei v. Minister of Employment and Immigration*,<sup>63</sup> the Federal Court of Canada stated that the question to be asked in determining whether there is reasonable chance is: "Is there a **reasonable chance** that persecution would take place were the applicant returned to his country of origin?" It was explained that the evidence need not necessarily show that he or she has suffered or would suffer persecution. On one hand, it need not be more than a 50% chance, and on the other hand, there must be more than a minimal possibility. The applicant must show he or she has good grounds for fearing persecution.

Mason C.J. of the High Court of Australia, in *Chan v. Minister for Immigration and Ethnic Affairs (Chan Case)*,<sup>64</sup> explained that a fear of prosecution is considered well-founded if there is a **real chance** that the refugee will be persecuted if he or she returns to his or her country of origin.

<sup>62</sup> *Fernandez v. Government of Singapore and Others*, United Kingdom: House of Lords (Judicial Committee), 25 May 1971.

<sup>63</sup> R.S.C. 1976, C. 52, 27 January 1989.

<sup>64</sup> HCA 62; (1989) 169 CLR 379.



This is equivalent to “a reasonable degree of likelihood” that the individual will be persecuted, or “a real and substantial risk of persecution”.

The High Court of Australia appears to impose a higher standard compared to other countries. It bears stressing, however, that the *Chan Case* referred to the US case of *INS v. Cardoza-Fonseca*, explaining that a similar opinion was expressed therein, to wit:

A similar opinion was expressed by the Supreme Court of the United States in *Immigration and Naturalization Service v. Cardoza-Fonseca* (1987) 94 L Ed 2d 434 where Stevens J., with reference to a statutory provision (which reflected the language of Art.1(A)(2) of the Convention), in delivering the majority opinion, and citing *Immigration and Naturalization Service v. Stevic* (1984) 467 US 407, at p 425, observed (at p 453) that the interpretation favoured by the majority would indicate that “it is enough that persecution is a reasonable possibility”. **I do not detect any significant difference in the various expressions to which I have referred. But I prefer the expression “a real chance” because it clearly conveys the notion of a substantial, as distinct from a remote chance, of persecution occurring** and because it is an expression which has been explained and applied in Australia: see the discussion in *Bouhey v. The Queen* [1986] HCA 29; (1986) 161 CLR 10, at p 21, per Mason, Wilson and Deane JJ. **If an applicant establishes that there is a real chance of persecution, then his fear, assuming that he has such a fear, is well-founded, notwithstanding that there is less than a fifty percent chance of persecution occurring.** This interpretation fulfils the objects of the Convention in securing recognition of refugee status for those persons who have a legitimate or justified fear of persecution on political grounds if they are returned to their country of origin.

J. Dawson of the High Court of Australia likewise opined that a real chance of persecution is necessary before fear of persecution could be considered well-founded. He expounded that “a real chance is one that is not remote, regardless of whether it is less or more than fifty percent.”<sup>65</sup>

The standard of proof in the *Chan Case* was also adopted in a 2019 case before the Immigration and Protection Tribunal of New Zealand involving the claim for refugee status of Turkish nationals.<sup>66</sup> The Tribunal stated that, in determining what is meant by “well-founded” under the convention, the fear of persecution must be “real, as opposed to a remote or speculative, chance of it occurring.”<sup>67</sup>

<sup>65</sup> Id.

<sup>66</sup> *BP (Turkey)*, [2019] NZIPT 801453-456, New Zealand: Immigration and Protection Tribunal, 30 October 2019, available at: <[https://www.refworld.org/cases/NZ\\_IPT.5f69ef274.html](https://www.refworld.org/cases/NZ_IPT.5f69ef274.html)> (visited 22 April 2022). See also *AH (Turkey)*, [2015] NZIPT 800665-666, New Zealand: Immigration and Protection Tribunal, 28 April 2015, available at: <[https://www.refworld.org/cases/NZ\\_IPT.55b0b0704.html](https://www.refworld.org/cases/NZ_IPT.55b0b0704.html)> (visited 05 April 2022).

<sup>67</sup> Id.

To be sure, the foregoing decisions are generally consistent with the reasonable degree threshold made applicable in our jurisdiction, only that the High Court of Australia in the *Chan Case* preferred to use term “real chance” to convey the notion of a substantial, as distinguished from a remote, chance of persecution.

After a careful perusal of the records of this case, We resolve that the DOJ-RSPPU failed to observe the foregoing procedure and principles in its resolution of petitioner’s application.

*A re-examination of the subjective and objective elements of petitioner’s claim as against the reasonable degree threshold is warranted*

To reiterate, an applicant in a refugee status determination case must provide an accurate, full, and credible account or proof to support his or her claim.<sup>68</sup> Nonetheless, the protection officer is expected to take on a more active role, by exerting efforts to clarify or understand the applicant’s claims. In other cases, the protection officer may even go as far as using the means at his or her disposal to obtain evidence which may help the applicant’s case.<sup>69</sup> Ultimately, the responsibility of proving a claim to a refugee status is a shared and collaborative burden between the applicant and the protection officer,<sup>70</sup> and the latter must consider both the subjective and objective elements of the claim.

In relation to the *subjective element*, petitioner provided the following information on his filled-out and signed Registration<sup>71</sup> and Application Questionnaire:<sup>72</sup>

- a. He is a Pakistani national<sup>73</sup> and a Christian.<sup>74</sup> He arrived in the Philippines under a Pakistani passport and a visa.<sup>75</sup>
- b. He came to the Philippines to save his life from Muslims. They want him to accept their religion.<sup>76</sup>

<sup>68</sup> DOJ Circular No. 058-12, Article II, Sec. 9.

<sup>69</sup> UNHCR Handbook, p. 43, pars. 195-196.

<sup>70</sup> DOJ Circular No. 058-12, Article II, Sec. 9.

<sup>71</sup> *Rollo*, pp. 88-95.

<sup>72</sup> *Id.* at 96-99.

<sup>73</sup> *Id.* at 89, 96.

<sup>74</sup> *Id.* at 89.

<sup>75</sup> *Id.* at 92, 97.

<sup>76</sup> *Id.* at 88.

c. His mother died and his father married a Muslim woman. His father then converted to Islam. He is being forced to change his religion; if he does not accept their religion, then he will be killed.<sup>77</sup>

d. This problem started four (4) years ago when his father married a Muslim woman. He characterized them as “not good”. In several instances, they also told him to convert or he will be killed; they tried to do it but he ran away.<sup>78</sup>

e. He and his brother faced the problem. His brother gave him money and helped him run away from Pakistan to save his life.<sup>79</sup> His brother does not have money to come with him.<sup>80</sup>

f. He also attributes the problem to his father and stepmother.<sup>81</sup>

Petitioner states in the petition that, years after the death of his mother, petitioner’s father converted to Islam and married a Muslim woman. Soon thereafter, his stepmother, who is a professor of Islamic Studies, moved in with them. At first, the stepmother was kind to him and his brother. His stepmother’s brother, who is a *mulana* (preacher), visited the family trying to persuade petitioner to convert to Islam, and in time, became aggressive. Sometime after Christmas in 2016, his stepmother and her brother, forced petitioner to read the *Quran* by forcibly handing it to him, but the latter refused to accept it. As a result, the *Quran* accidentally dropped. The brother of his stepmother told petitioner that he insulted the *Quran* and that he is dead, and the former grabbed a knife and petitioner ran away. He states that he brought nothing and slept in a friend’s house until he was referred to a non-governmental organization in Pakistan named “Save and Serve Christ,” which helped him leave Pakistan for the Philippines.<sup>82</sup>

In denying petitioner’s application, the DOJ-RSPPU explained in its 25 May 2017 Decision that there is only a perceived notion of being prosecuted, not persecuted.<sup>83</sup> Further, the DOJ-RSPPU expressed doubts as to petitioner’s credibility. It highlighted that as regards the claim of “being forced to convert from being a Christian to Muslim”, petitioner during his interview stated that he was not forced but merely persuaded,<sup>84</sup> viz:

“During the applicant’s interview, he was specifically asked whether he was being forced or compelled to convert his religion from Catholic to Muslim. The applicant replied that he was not being forced nor compelled but he was being persuaded. The applicant cannot now

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<sup>77</sup> Id. at 93.

<sup>78</sup> Id.

<sup>79</sup> Id. at 93 and 97.

<sup>80</sup> Id. at 99.

<sup>81</sup> Id. at 93.

<sup>82</sup> Id. at 66-67.

<sup>83</sup> Id. at 118.

<sup>84</sup> Id. at 80.



change his statement to further his claim. Changing his statement now only dampens his credibility.”

As discussed, the subjective element of fear in the mind of the applicant is a fundamental matter. The protection officer is primarily required to evaluate the applicant’s statements, as the non-presentation of additional evidence cannot be taken against him or her. After all, the proceeding for refugee status determination is non-adversarial and intended to facilitate identification of refugees, with the protection officer taking on a shared and collaborative burden in proving the applicant’s claims.

Here, records do not show that the DOJ-RSPPU attempted to clarify the supposed inconsistency in petitioner’s statements. Indeed, if the denial of an application would be hinged on the applicant’s choice of words, it behooves the State to ensure that the applicant deliberately and intelligently chose the words used.

However, when asked about his proficiency in speaking and understanding English, petitioner ticked the box “not easily” – within a range of “easily,” “not easily,” and “none” – in his Registration with the DOJ-RSPPU.<sup>85</sup> Records do not show whether petitioner was provided with an interpreter despite his right to have one, if necessary, “at all stages of the refugee status determination and for the purposes of the preparation of the written application and for the interview.”<sup>86</sup> The DOJ-RSPPU failed to consider that the change in petitioner’s statement, from “being persuaded” to “being forced” to convert to Islam and vice versa, may have been due to a language barrier, given his difficulty in speaking and understanding the English language. Not being proficient in English, petitioner may not have accurately portrayed the nuances of his situation in Pakistan.

To clarify petitioner’s allegations, the DOJ-RSPPU should have considered his original statement of “being persuaded” to convert to Islam together with the rest of his claims. Notably, he was constant in relaying his fear of religious persecution. As mentioned, in his Registration, petitioner already claimed that he is being forced to change his religion, and he would be killed if he does not convert to Islam.<sup>87</sup> As also stated in the Handbook, even assuming that there are inconsistencies in petitioner’s account, a further interview may be conducted to clarify and resolve any contradictions in his statements.<sup>88</sup>

Applying by analogy the respect given by the Court to trial courts in cases heard before them, the DOJ-RSPPU is in the best position to ascertain

<sup>85</sup> Id. at 89.

<sup>86</sup> DOJ Circular No. 058-12, Article II, Section 10.

<sup>87</sup> Id.

<sup>88</sup> UNHCR Handbook, p. 44, pars. 199 and 200.



and measure the credibility of the applicant through their actual observation of their statements and demeanor. However, given the *sui generis* nature of refugee determination cases, more is expected from the DOJ-RSPPU. In fact, unless there are good reasons to the contrary, the DOJ-RSPPU is even called to give an applicant the benefit of the doubt.<sup>89</sup> The records of this case would show that the DOJ-RSPPU fell short of its duty to have a shared and collaborative burden with petitioner, by exerting efforts to clarify and understand his statements.

As regards the *objective element*, petitioner also claims that the DOJ-RSPPU erred in ruling that petitioner is not subject to persecution under Pakistan's blasphemy laws for dropping the *Quran*.<sup>90</sup> Petitioner asserts that the DOJ-RSPPU's ruling is grounded on speculation, having been made without considering the real situation in Pakistan where there is a strong possibility that petitioner, a Christian, may be subjected to persecution under Pakistan's stringent and rigid blasphemy laws.<sup>91</sup> Petitioner then cites instances of blasphemy allegations in Pakistan.<sup>92</sup>

A review of the ruling of the Secretary of Justice through the DOJ-RSPPU shows that it relied solely on the United Kingdom's Country Information and Guidance on Christian and Christian Converts in Pakistan (UK Country Guidance),<sup>93</sup> which in turn cited *AK and SK (Christians: risk) Pakistan CG [2014]*<sup>94</sup> (*AK and SK Case*). The *AK and SK Case* involves Christians in Pakistan who seek to establish that they would be at real risk from extremist groups if returned to their home area or their country. There, the Upper Tribunal declared the following as country guidance, which the DOJ-SPPU quoted in the assailed Decisions:

- i. Christians in Pakistan are a religious minority who, in general, suffer discrimination but this is not sufficient to amount to a real risk of persecution.
- ii. In general, Christians are able to practice their faith, can attend church, participate in religious activities and have their own schools and hospitals.
- iii. Although Christians, as with other faiths, may be at risk of blasphemy allegations, this in itself is not generally enough to make out a

<sup>89</sup> Id. at 43, pars. 195-196.

<sup>90</sup> *Rollo*, p. 20.

<sup>91</sup> Id.

<sup>92</sup> Id. at 21-22.

<sup>93</sup> United Kingdom: Home Office, Country Information and Guidance - Pakistan: Christians and Christian converts, May 2016, v 2.0, available at: <<https://www.refworld.org/docid/5732cd444.html>> (visited 25 July 2022).

<sup>94</sup> *AK and SK (Christians: risk) Pakistan CG v. Secretary of State for the Home Department*, [2014] UKUT 00569 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 15 December 2014, available at: <[https://www.refworld.org/cases,GBR\\_UTIAC,549962d94.html](https://www.refworld.org/cases,GBR_UTIAC,549962d94.html)> (visited 21 April 2022).

claim under the Refugee Convention unless there is evidence that the charge is pursued.<sup>95</sup>

We find the reliance of the DOJ-RSPPU solely on the UK Country Guidance and the *AK and SK Case* improper.

It is observed that in contrast to the DOJ-RSPPU's Decisions, the Upper Tribunal in the *AK and SK Case* did not rely solely on one source. Instead, the Upper Tribunal considered several resources to formulate a comprehensive country-of-origin information, which was used together with the submissions of the parties and the evidence of experts and other witnesses to make its findings and give country guidance. While the *AK and SK Case* may be used as a resource material, We wish to emphasize that a determination of refugee status ought to be carefully prepared using "reliable, accurate, up-to-date, and country- or region- specific as well as branch- or sect-specific information". Relevantly, in the 2017 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan*,<sup>96</sup> it was concluded that "**members of the Christian community, including in particular those targeted by militant groups or charged with criminal offences under the blasphemy provisions, victims of bonded labour, severe discrimination, forced conversion and forced marriage, as well as Christians perceived as contravening social mores, may, depending on the individual circumstances of the case, be in need of international refugee protection on account of their religion.**"<sup>97</sup>

Further, proper context is necessary in the utilization of UK Country Guidance in our refugee status determination cases. In this regard, it is worth stressing that the *AK and SK Case* based its determination of AK and SK's refugee status on the establishment of a real risk of persecution based on the country guidance and evidence presented by the parties. As pointed out by Senior Associate Justice Marvic M.V.F. Leonen, however, the circumstances in the *AK and SK Case* are not on all fours with the case at hand.<sup>98</sup> In the *AK and SK Case*, AK and SK made claims which were later found to lack credibility with regard to the events in Pakistan. The lack of documents to support the alleged attacks by extremists against AK and SK coupled with the presence of evidence contradicting their claims, were considered by the Upper Tribunal in dismissing the appeal of AK and SK. The Upper Tribunal

<sup>95</sup> *Rollo*, pp. 105-106. Also, *AK & SK Case*, pars. 240, 241 and 245.

<sup>96</sup> *Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan (HCR/EG/PAK/17/01)*, January 2017, p. 45, available at: <<https://www.refworld.org/pdfid/5857ed0e4.pdf>> (visited 25 July 2022).

<sup>97</sup> *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees (HCR/GIP/04/06)*, available at: <<https://www.unhcr.org/publications/legal/40d8427a4/guidelines-international-protection-6-religion-based-refugee-claims-under.html>> (visited 25 July 2022).

<sup>98</sup> Reflections of J. Leonen, p. 9.

also concluded that AK and SK have a home and family to return to and are educated enough to find employment on their return.

Unlike in the *AK and SK Case*, the DOJ-RSPPU established that the forced conformity with religious practice and threat of death came from a relative by affinity, i.e., his stepmother's brother. Further, aside from the supposed inconsistency in the statement of petitioner on whether he was being forced or merely persuaded to convert, there is nothing in the records that contradict the claims of petitioner. There also was an alleged threat of death such that petitioner left home immediately and went into hiding. At the time of his departure, petitioner, who was only able to finish 10<sup>th</sup> grade, was dependent on his father for material support. Given the significant differences of said case from the case at bar, it is erroneous to heavily rely on the *AK and SK Case*.

*A remand of the case to the DOJ-RSPPU is necessary*

At this juncture, We reiterate that the Court is not a trier of facts. We are not capacitated to receive and appreciate evidence of the first instance. Considering the factual issues that still need to be threshed out in light of the clarifications on the refugee status determination process, We find it prudent to remand the case back to the DOJ-RSPPU.<sup>99</sup>

The DOJ-RSPPU is urged to actively discharge its burden in assisting petitioner to elucidate his claim. Reception of further evidence, conduct of additional interviews, in-depth study of country-of-origin information, and assessment of petitioner's averments to a greater extent are thus encouraged. Thereafter, the evidence should be assessed based on the reasonable degree threshold We laid down in this case.

In this regard, We provide the following guidelines for refugee status determination proceedings:

1. To discharge the shared and collaborative burden between the applicant and the protection officer: (a) the applicant must provide accurate, full, and credible account or proof in support of his or her claim, and submit all relevant evidence reasonably available; and (b) the protection officer must assist and aid the applicant in explaining, clarifying, and elucidating his or her claim.

<sup>99</sup> See *Aquino v. Aquino*, G.R. No. 208912, 07 December 2021; *Spouses Dela Cruz v. Heirs of Sunia*, 683 Phil. 239 (2012); *Syjuco v. Bonifacio*, 750 Phil. 443 (2015).

2. Notwithstanding the protection officer's shared burden, it is also the duty of the protection officer to assess the credibility of the statements of the applicant and the evidence on record.

3. The facts, as ascertained, should be applied to the definition of a refugee under the 1951 Refugee Convention and the 1967 Protocol, considering the subjective and objective elements of the phrase "well-founded fear". The protection officer should determine if the applicant has established, to a reasonable degree, that he or she would have been persecuted had the applicant not left his or her country of origin or would be persecuted if the applicant returns thereto.

Ultimately, in as much as we want to extend the mantle of our country's protection to an applicant, we cannot do so without first being convinced that the applicant is unable, or unwilling, to avail himself of the protection of his home country due to a well-founded fear of religious persecution. The humanitarian nature of international refugee law requires us to offer a helping hand to those who have satisfied the requirements for recognition of refugee status. But the same cannot be offered indiscriminately with our finite resources. Care must be taken if we are to provide home and solace to those who truly need it so they can rest their fearful hearts.

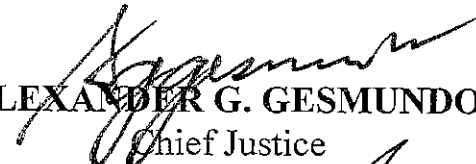
Thus, the case should be remanded to the DOJ-RSPPU in order to re-evaluate petitioner's application in accordance with the evidentiary threshold and guidelines established in the instant case.

**WHEREFORE**, the petition is hereby **PARTLY GRANTED**. Accordingly, the Decision dated 31 January 2019 and Resolution dated 10 September 2019 of the Court of Appeals in CA-G.R. SP No. 153799 are **REVERSED** and **SET ASIDE**. The case is remanded to the Department of Justice – Refugees and Stateless Persons Protection Unit for further proceedings in accordance with the guidelines stated in this Decision.

**SO ORDERED.**

  
**RODIL V. ZALAMEDA**  
Associate Justice

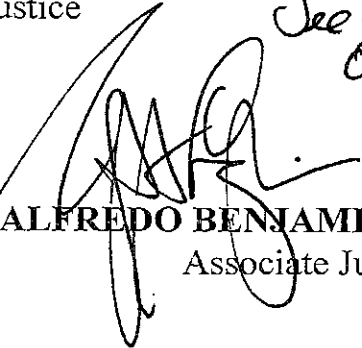
**WE CONCUR:**


  
**ALEXANDER G. GESMUNDO**  
Chief Justice

*I concur. see separate opinion.*

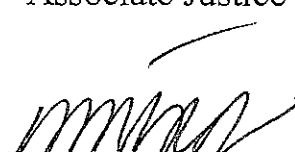
*See Concurring  
Opinion*

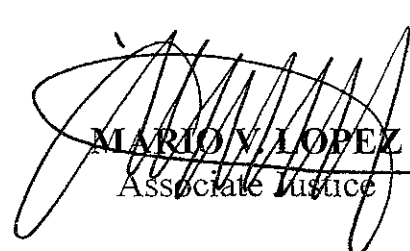
  
**MARVIC M. V. F. LEONEN**  
Associate Justice

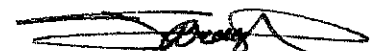
  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

(No part)  
**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**MARIO V. LOPEZ**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
Associate Justice

  
**JAPAR B. DIMAAMPAO**  
Associate Justice

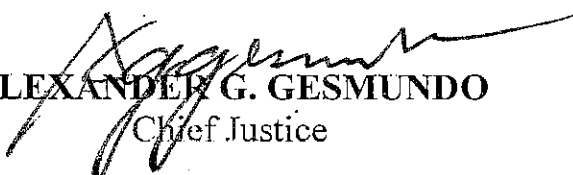
  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

(No part)  
**ANTONIO T. KHO, JR.**  
Associate Justice

(No part)  
**MARIA FILOMENA D. SINGH**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

