



HIGH COURT OF AUSTRALIA

Public Information Officer

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NAIS, NAIT AND NAIU v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS AND REFUGEE REVIEW TRIBUNAL

A prolonged delay in the determination of a visa application by the Refugee Review Tribunal resulted in procedural unfairness, the High Court of Australia held today.

Three Bangladeshi citizens, a husband and wife and their daughter, arrived in Australia in August 1996 and lodged applications for protection visas in January 1997. They claimed they had a well-founded fear of persecution in Bangladesh because the husband was Muslim and the wife Catholic. The Immigration Department refused the application in May 1997 and the family immediately applied to the Refugee Review Tribunal for a review. The parents gave oral evidence at a hearing on 6 May 1998 and sent in further written material. They did not hear from the RRT until 30 November 2001 when the RRT invited the family to attend another hearing on 19 December 2001. The RRT also sought out expert evidence and country information from the Australian High Commission which reported that mixed marriages are readily accepted, although resistance is greater in rural areas, and that if the family accepts a marriage so will the community.

On 14 January 2003, the RRT handed down its decision that the family was not entitled to protection visas. It noted that the husband made admissions that certain claims made by him and his wife were fabricated and it suggested that this indicated collusion. The RRT rejected particular incidents of apparent persecution. It accepted that the husband was alienated from his family but that this did not affect his right to remain married or to find work. It held that the couple did not face a real chance of harm and any fears they held were not well-founded.

The Federal Court dismissed an application for judicial review of the RRT decision. The family appealed to the Full Court of the Federal Court, which by a 2-1 majority dismissed the appeal. The family then appealed to the High Court. They argued that the delay meant that the RRT could not possibly properly assess and comment fairly on their demeanour by the time it made its decision.

The Court, by a 4-2 majority, allowed the appeal. The majority held that the RRT's decision, which significantly depended on the credibility of the asylum seekers, was not made fairly. The procedure was flawed in a manner likely to affect the RRT's capacity to make a proper assessment of the family's sincerity and reliability. When the RRT, without explanation, draws out its procedures to such an extent that its capacity to discharge its statutory obligations is likely to be materially diminished, then a case of procedural unfairness arises. The Court remitted the matter to the RRT for redetermination.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*