

**SZAYW v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS (S57/2006)**

Court appealed from: Full Court of the Federal Court of Australia

Date of judgment: 12 August 2005

Date of grant of special leave: 10 February 2006

The appellant is a Palestinian who lived in Lebanon. He claimed to fear persecution in Lebanon at the hands of Hezbollah or Islamic Jihad. On the appellant's account, three other applicants for protection visas had shared his experiences in Lebanon. A delegate of the Minister refused to grant any of them a protection visa.

Each sought review of the decision by the Refugee Review Tribunal ("RRT"). The appellant and the other three persons were represented, before the RRT, by the Refugee Advice and Casework Service (Australia) Inc ("RACS"). On 23 December 1998, RACS wrote to the Registrar of the RRT on behalf of the appellant and requested:

*We confirm that we act for [the appellant] in his application for review of the decision refusing to grant a Protection Visa.*

*Please find attached an application for review signed by him.*

*We note that the four young men [the three others and the appellant] were together for the events which form their claim. We ask therefore that consideration be given to the same member being allocated to the four persons.*

Responding to this request of RACS, the RRT determined that one member would hear the reviews of the appellant and the three others on the one day. The appellant gave his evidence in the presence of two of the three other persons and inconsistencies with their evidence were discussed with all of them present.

The RRT found that the hardship and discrimination the appellant would suffer as a Palestinian in Lebanon would not amount to persecution and that his claims relating to a link with Hezbollah lacked credibility. It also concluded any censure or disciplinary action the appellant might suffer from the Palestinian Liberation Organisation or the Palestinian Karate Association, the two organisations he "dragged ...into a dishonest visa scheme", would not be for a Convention reason.

Before the Federal Magistrate, the appellant successfully contended he was not given a private hearing as required by s 429 of the *Migration Act* 1958 (Cth) ("the Act"). He also contended, unsuccessfully, that he was denied procedural fairness. In the appeal to the Full Federal Court the Minister challenged the Federal Magistrate's conclusion about whether the hearing was "in private".

The majority of the Full Federal Court (Moore and Weinberg JJ, Kiefel J dissenting) found that the Federal Magistrate erred in construing s 429 so narrowly as to require exclusion of the other persons from the hearing in the circumstances of the case. The majority found that the expression "in private" in s 429 meant no more than that the hearing not be "in public".

A notice of contention has been filed by the respondent.

The ground of appeal is:

- The majority of the Full Court of the Federal Court erred in finding that the Refugee Review Tribunal did not breach section 429 of the Migration Act 1958 by conducting the hearing other than in private.