

SZBYR & ANOR v MINISTER FOR IMMIGRATION AND INDIGENOUS AFFAIRS & ANOR (S3/2007)

Court appealed from: Federal Court of Australia

Date of judgment: 22 November 2005

Date of grant of special leave: 8 December 2006

The appellants, who are husband and wife, are Indian nationals who arrived in Australia on 2 October 2002. They lodged an application for protection visas with the Department of Immigration and Multicultural Affairs.

Their application was based primarily upon an assertion that the male appellant had a "well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group or political opinion" within the meaning of Article 1a(2) of the *Refugees Convention*. The female appellant's claim was based upon her membership of her husband's family unit.

The application was refused by a delegate of the first respondent.

The appellants then applied to the Refugee Review Tribunal ("RRT") for a review of that decision. According to the RRT the appellants' claim was based principally upon the following matters. The male appellant had previously been married to a woman known as Salima. The male appellant was not acceptable to Salima's family. Salima's family resented the male appellant because of his religion and social status. Motivated by that animus, Salima's family procured the male appellant's arrest and imprisonment on false charges by the police on four occasions. On one of these occasions the female appellant was also arrested and charged.

The RRT refused the judicial review application on 14 October 2003. It found that the appellant husband was not a reliable witness. It also held that he had not been frank concerning his past difficulties. The RRT further noted inconsistencies between his written claims and his oral evidence, along with other implausibilities. In addition the RRT found that the appellants had left India on their own passports, notwithstanding the existence of supposedly outstanding charges against them. It found this to be inconsistent with the independent evidence which indicated that no one 'of interest' would be able to leave India travelling on a passport in their own name. Furthermore, the RRT was not satisfied that the appellants were being persecuted for a Convention reason. It did not accept their submission that religion or social status were in any way factors in the harm that they feared. The RRT found that theirs was essentially a private dispute.

On 5 August 2005 Magistrate Raphael dismissed the appellants' application for judicial review. His Honour held that the essential reason for the RRT dismissing their application was the absence of any Convention nexus. He noted that for the purposes of section 424A of the *Migration Act* 1958 ("the

Act"), not all "information" relied on by the RRT was relevant, only that forming part of the decision. As the absence of a Convention-reason was the essential part of the RRT's reasons, it did not have to notify the appellants that the country information indicated that it was implausible that someone was able to leave India undetected when there were outstanding charges against them.

On 22 November 2005 Justice Madgwick dismissed the appellants' appeal. His Honour rejected their submission that the Federal Magistrate had erred in failing to grant the appellants an adjournment. He further held that there was nothing to show that the RRT had fallen into error. Justice Madgwick also found that the RRT's decision was unaffected by any information to which section 424A of the Act may have applied.

The grounds of appeal include:

- His Honour erred in holding that there was no error in the decision below, or in failing to find whether or not there was an error in the decision below.
- His Honour erred in finding that the RRT's decision "was unaffected by any information to which s 424A might have applied".
- His Honour should have found that section 424A was not complied with, because the RRT did not provide particulars in writing of information that it considered would form part of the reason for affirming the decision under review.