

SZBEL v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS & ANOR (S274/2006)

Court appealed from: Federal Court of Australia

Date of judgment: 9 February 2006

Date of grant of special leave: 4 August 2006

This matter concerns an Iranian seaman who applied for a protection visa shortly after "jumping ship" in Port Kembla on 7 April 2001. The Appellant relied upon his reasons for jumping ship, rather than his purported conversion to Christianity, to base his claim for refugee status. He claimed that his interest in Christianity had become known to his work mates, including the Captain. He said that the Captain had threatened to turn him over to the authorities upon their return to Iran. The implication being that he would then be interrogated and dealt with severely for committing apostasy.

In 29 May 2001 the Minister's delegate rejected his application, as did the Refugee Review Tribunal ("RRT") on 27 June 2003. The RRT found that the Appellant's claims lacked credibility. It was also not satisfied that his Australian baptism and his involvement in Christian activities since his arrival here were genuine. In reaching that conclusion, the RRT had country information before it that suggested that Iranian converts to Christianity would be executed for apostasy. It also knew that Iranian merchant seamen with an adverse profile were likely to be imprisoned by their Captains if they were considered to be a security threat. This had not happened to the Appellant.

In February 2005 Federal Magistrate Raphael dismissed the Appellant's application for judicial review, while Justice Graham dismissed his appeal in February 2006. His Honour held that it was open to the RRT to find that the Appellant's freedom of movement (while on board in Port Kembla) was inconsistent with him holding a well-founded fear of persecution for reasons of his religion. It was also open to the RRT to reject the Appellant's claim of being motivated to jump ship because of his involvement in Christianity. His Honour further rejected the Appellant's submission that he was denied natural justice. While Justice Graham acknowledged that the RRT was obliged to afford the Appellant natural justice, it was not obliged to expose its provisional views to comment before making the decision in question.

The ground of appeal is:

- Justice Graham erred in failing to hold that the Second Respondent denied the Appellant procedural fairness by reaching adverse conclusions that certain aspects of his claims were implausible, being conclusions that were not obviously open on the known material without giving the Appellant the opportunity to be heard in respect of those matters.