# FEDERAL CIRCUIT COURT OF AUSTRALIA

*SZRSN v MINISTER FOR IMMIGRATION AND BORDER PROTECTION (No.2)* *[2014] FCCA 2482*

Catchwords:
MIGRATION – Application for review of decision of a delegate not to accept an application for a protection visa – whether there is an arguable case that a delegate of the first respondent made a jurisdictional error by refusing to permit the applicant to lodge an application for a protection visa because the applicant had already made an application for a protection visa that had been refused – no arguable case of jurisdictional error.

Legislation:
*Federal Circuit Court Rules 2001* (Cth), r. 44.12(1)(a)
*Migration Act 1958* (Cth), ss.36(2)(aa), 48A, 48A(1), 48A(1C), 48A(1C)(a)

Cases cited:
*SZGIZ v Minister for Immigration and Citizenship* [2013] FCAFC 71

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| Applicant: | SZRSN |
| Respondent: | MINISTER FOR IMMIGRATION AND BORDER PROTECTION |
| File Number: | SYG 1898 of 2014 |
| Judgment of: | Judge Manousaridis |
| Hearing date: | 15 October 2014 |
| Delivered at: | Sydney |
| Delivered on: | 15 October 2014 |

**REPRESENTATION**

Applicant in person

Solicitors for the Respondent: Ms M. Stone
DLA Piper

**ORDERS**

(1) The application is dismissed pursuant to rule 44.12(1)(a) of the *Federal Circuit Court Rules 2001* (Cth).

(2) The applicant pay the respondent's costs in the amount of $3,000.

# FEDERAL CIRCUIT COURT
# OF AUSTRALIA
# AT SYDNEY

## SYG 1898 of 2014

**SZRSN**
Applicant

And

**MINISTER FOR IMMIGRATION AND BORDER PROTECTION**
Respondent

## REASONS FOR JUDGMENT

## (revised from transcript)

1. Before the Court is an application under r.44.12(1)(a) of the *Federal Circuit Court Rules 2001* (Cth) to dismiss an application for judicial review on the ground that the application for judicial review raises no arguable case for the relief it seeks. The application for judicial review is directed to a decision made by a delegate of the respondent (**Minister**) on 1 July 2014 rejecting an application for a protection visa the applicant made on 1 July 2014.

2. The ground on which the delegate rejected the application was that the applicant, a non-citizen, and while in the migration zone, had previously made an application for a protection visa which has been refused. Under s.48A(1) of the *Migration Act 1958* (Cth) (**Act**), a non-citizen who has been refused a protection visa in those circumstances may not make a further application for a protection visa while in the migration zone.

3. The applicant does not say he has not made a previous application for a protection visa while in the migration zone which has been refused. He

claims, however, that his application for a protection visa is valid, notwithstanding s.48A of the Act. That is so, the applicant submits, because the ground on which he seeks protection is different from the grounds on which he relied in his previous application that has been refused.

4. What I have so far stated as being the applicant's claim I have taken from the applicant's application and the affidavit which he filed in support. In addition, today the applicant made some oral submissions from the bar table in which he covered three things. One is that he asserted that the Refugee Review Tribunal (**Tribunal**) failed to properly take into account the interests of his children when determining an application made by him for review of a delegate's decision refusing to grant the applicant a protection visa. The applicant also referred to a failure by the Tribunal and, I think, by the Minister – or a delegate of the Minister – in relation to a further application for a protection visa the applicant filed to deal with his claims based on complementary protection, that is to say, s.36(2)(aa) of the Act. He also asserted from the bar table what is contained in his affidavit, that is to say, that the application for a protection visa he filed on 1 July 2014 raises grounds that he had not raised in his previous applications.

5. If I can briefly just deal with the first two matters the applicant raised today. As to the claim concerning the failure by the Tribunal to take into account the interests of his children, the applicant previously sought to challenge in this Court the Tribunal's decision in which the Tribunal refused to grant the applicant a protection visa. That application failed, and, for that reason alone, it is not open for the applicant to rely on it, even if it were a matter relied upon in his application.

6. As to the complementary protection submission, that was a matter on which the applicant relied on a further application for a protection visa which he lodged but which was rejected and which was the subject of my consideration in a decision I gave in January of this year. Again, that matter, even if it had been raised in the application that is before me, would not be something that the applicant could agitate again.

7. I therefore turn to what is the claim I have to consider today, that is to say, the claim that the delegate – or the Minister, in this case, erred in

rejecting the application for a protection visa which the applicant filed on 1 July 2014. The Minister submits that the making of an application for protection on a ground that is different from the ground on which the application that has been refused was made does not overcome the bar stipulated by s.48A of the Migration Act. The Minister relies on s.48A(1C) of the Act, which was added to the Act on 28 May 2014 as a result of Schedule 2 to the *Migration Amendment Act 2014* (Act No. 30, 2014) (**Amending Act**).

8. That subsection provides:

> *Subsections (1) and (1B) apply in relation to a non-citizen regardless of any of the following:*
>
> > *(a) the grounds on which an application would be made or the criteria which the non-citizen would claim to satisfy;*
> >
> > *(b) whether the grounds on which an application would be made or the criteria which the non-citizen would claim to satisfy existed earlier;*
> >
> > *(c) the grounds on which an earlier application was made or the criteria which the non-citizen earlier claimed to satisfy;*
> >
> > *(d) the grounds on which a cancelled protection visa was granted or the criteria the non-citizen satisfied for the grant of that visa.*

9. The Minister also relies on a passage from the Explanatory Memorandum to that Amending Act which states that the amendment to s.48A addresses the issues arising from the judgment of the Full Federal Court in *SZGIZ v Minister for Immigration and Citizenship* [2013] FCAFC 71 where the Court concluded that s.48A of the Act, as it then stood, did not prevent a non-citizen making a further application for a protection visa based on a criteria that did not form the basis of a previous unsuccessful protection visa application.

10. Whether or not s.48A(1C) has the effect for which the Minister contends is to be determined by applying the text of the subsection properly construed to the circumstances of this case. The grounds for protection the applicant proposed to make in the application which was rejected by the delegate on 1 July 2014 are "*grounds on which an*

*application would be made*" within the meaning of s.48A(1C)(a) of the Act.

11. Because of s.48A(1C), therefore, s.48A(1) of the Act applies in relation to the applicant, regardless of the grounds on which the applicant proposed to apply for a protection visa. For these reasons, I am not satisfied that the application for a review of the delegate's decision of 1 July 2014 raises an arguable case for the relief the applicant claims in his application. I propose, therefore, to dismiss the application with costs.

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**I certify that the preceding eleven (11) paragraphs are a true copy of the reasons for judgment of Judge Manousaridis.**

Associate:

Date: 29 October 2014