FEDERAL COURT OF AUSTRALIA

SZOFE v Minister for Immigration and Citizenship [2010] FCAFC 79

Citation:	SZOFE v Minister for Immigration and Citizenship [2010] FCAFC 79
Parties:	**SZOFE v MINISTER FOR IMMIGRATION AND CITIZENSHIP and REFUGEE REVIEW TRIBUNAL**
File number:	NSD 616 of 2010
Judges:	**EMMETT, BUCHANAN & NICHOLAS JJ**
Date of judgment:	30 June 2010
Catchwords:	**MIGRATION** – matter referred to a Full Court of the Federal Court from the Federal Magistrates Court – protection visa – notification of refusal to grant visa – construction of s 66(2)(d)(iv) of the *Migration Act 1958* (Cth) – whether Minister is required to notify of *all* places at which an application can be lodged – whether Tribunal had jurisdiction to review – exercise of jurisdiction – whether Refugee Review Tribunal failed to deal with Applicant's claims
Legislation:	*Migration Act 1958* ss 66(2)(d)(iv), 412(1)(b), 494 *Migration Regulations 1994* (Cth) reg 4.31
Cases cited:	*Craig v The State of South Australia* (1995) 184 CLR 163 *Hasan v Minister for Immigration and Citizenship* [2010] FCA 375 *Maroun v Minister for Immigration and Citizenship* [2009] FCA 1284 *Minister for Immigration and Citizenship v SZIZO* (2009) 238 CLR 627 *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 *Saeed v Minister for Immigration & Citizenship* [2010] HCA 23
Date of hearing:	23 June 2010
Place:	Sydney
Division:	GENERAL DIVISION
Category:	Catchwords

Number of paragraphs:	76
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IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
GENERAL DIVISION **NSD 616 of 2010**

BETWEEN: **SZOFE**
Applicant

AND: **MINISTER FOR IMMIGRATION AND CITIZENSHIP**
First Respondent

REFUGEE REVIEW TRIBUNAL
Second Respondent

JUDGES: **EMMETT, BUCHANAN & NICHOLAS JJ**
DATE OF ORDER: **30 JUNE 2010**
WHERE MADE: **SYDNEY**

THE COURT ORDERS THAT:

1. The application be dismissed.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules. The text of entered orders can be located using Federal Law Search on the Court's website.

IN THE FEDERAL COURT OF AUSTRALIA
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BETWEEN:	**SZOFE** **Applicant**
AND:	**MINISTER FOR IMMIGRATION AND CITIZENSHIP** **First Respondent**
	REFUGEE REVIEW TRIBUNAL **Second Respondent**
JUDGES:	**EMMETT, BUCHANAN & NICHOLAS JJ**
DATE:	**30 JUNE 2010**
PLACE:	**SYDNEY**

REASONS FOR JUDGMENT

EMMETT J:

1 This proceeding raises two questions. The first question is concerned with the construction and effect of provisions of the *Migration Act 1958* (Cth) (**the Act**) and the *Migration Regulations 1994* (**the Regulations**) relating to the notification to an applicant for a visa under the Act of a decision of a delegate of the first respondent, the Minister for Immigration and Citizenship (**the Minister**), to refuse to grant the visa. The Applicant says that, by reason of failure to comply with the requirements of the Act and the Regulations concerning the giving of notice of the delegate's decision, the purported application made by the Applicant to the Tribunal did not enliven the Tribunal's jurisdiction to review the decision. Accordingly, she says, the decision of the Tribunal dealing with her application should be treated as a nullity. The second question, which only arises if the Applicant is unsuccessful in relation to the first question, is concerned with whether the second respondent, the Refugee Review Tribunal (**the Tribunal**), in dealing with the application, failed to deal with claims made by the Applicant or asked itself the wrong question in relation to such claims, such that the Tribunal's decision was affected by jurisdictional error.

2 The Applicant is a citizen of Cameroon. She arrived in Australia on 15 January 2009. On 27 February 2009, she applied for a protection (Class XA) visa under the Act. On 22 May 2009, a delegate of the Minister decided to refuse to grant a visa to the Applicant (**the Delegate's Decision**). By letter of 22 May 2009 (**the Notification Letter**), sent to the Applicant by registered post to her residential address in Harris Park, a western suburb of Sydney, the Minister's delegate informed the Applicant that her application for a protection visa had been refused. It will be necessary to return later to the precise terms of the Notification Letter.

3 On 2 June 2009, the Applicant lodged by hand, at the Sydney registry of the Tribunal, an application for review of the Delegate's Decision. By letter of 3 June 2009, the Tribunal acknowledged receipt of the application for review. The Tribunal then embarked on a review of the Delegate's Decision. By letter of 26 June 2009 addressed to the Applicant at her Harris Park address, the Tribunal invited the Applicant to appear before the Tribunal on 29 July 2009 to give evidence and present arguments relating to the issues arising in her case. The Applicant accepted that invitation.

4 The Applicant appeared before the Tribunal on two occasions to give evidence and present arguments. The hearings were conducted with the assistance of an interpreter from English to French and French to English. At the Applicant's request, the Tribunal also received oral evidence from Ms Aminatou Dan at the first hearing.

5 On 9 February 2010, the Tribunal decided to affirm the Delegate's Decision not to grant the Applicant a protection visa. On the same day, the Tribunal wrote to the Applicant and informed her that it had decided to affirm the Delegate's Decision.

6 The Applicant then commenced a proceeding in the Federal Magistrates Court of Australia, seeking Constitutional writ relief in respect of the decision of the Tribunal. In her amended application filed on 18 May 2010, the Applicant relied on three grounds. The first ground is that the decision of the Tribunal was vitiated by jurisdictional error because it had no jurisdiction to entertain the Applicant's application for review of the Delegate's Decision. The second ground is that the Tribunal failed to address claims made by the Applicant. The third ground is that the Tribunal, in dealing with the Applicant's claims, asked itself the wrong question. The Applicant says that the second and third grounds give rise to

jurisdictional error on the part of the Tribunal. The second and third grounds only arise if the Applicant fails on the first ground.

7 Having regard to the very substantial number of other cases that would be affected if the first ground relied upon by the Applicant were to be made out, the Minister, with the support of the Applicant, requested the Federal Magistrates Court to transfer the proceeding to the Federal Court, with a recommendation that the proceeding be referred forthwith to a Full Court for determination of the question raised by that ground. On 8 June 2010, the Chief Justice determined, pursuant to s 20(1A) of the *Federal Court of Australia Act 1976* (Cth), that the proceeding should be heard at first instance by a Full Court of three judges. The Minister asked the Court to give as much expedition to the hearing and determination of the proceeding as is practicable.

8 A particular reason for referring the matter to a Full Court is that a single judge of the Court, exercising appellate jurisdiction on appeal from the Federal Magistrates Court in an earlier case, had decided a very similar question in the way contended for by the Applicant. The Minister contends that that case was wrongly decided and should not be followed.

THE RELEVANT STATUTORY PROVISIONS

9 It is desirable to say something about the relevant scheme of the Act and about the provisions in question in this proceeding. Section 29(1) of the Act provides that the Minister may grant, to a non-citizen, permission to travel to and enter Australia and to remain in Australia. Such a permission is to be known as a visa. Section 31 provides that there are to be prescribed classes of visas, as well as classes of visas provided for in the subsequent provisions of the Act. Section 36(1) provides that there is a class of visas to be known as protection visas. Under s 36(2), a criterion for a protection visa is that the Applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the *Refugees Convention* as amended by the *Refugees Protocol*.

10 Under s 45(1)of the Act, a non-citizen who wants a visa must apply for a visa of a particular class. Section 47(1) provides that the Minister must consider a valid application for a visa. Under s 65, after considering a valid application for a visa, the Minister, if

satisfied that certain requirements are satisfied, must grant the visa. If not so satisfied, the Minister must refuse to grant the visa.

11 Section 66 of the Act is critical to the first ground raised in the amended application. Under s 66(1), when the Minister grants or refuses to grant a visa, the Minister must **notify** the applicant of the decision **in the prescribed way**. For the purposes of s 66(1), reg 2.16 sets out the way of notifying a person of a decision to grant or refuse to grant a visa. Under reg. 2.16(3), the Minister must notify an applicant of a decision to refuse to grant a visa by one of the methods specified in s 494B of the Act. Section 494B(1) provides that, for the purposes of provisions of the Act or the Regulations that require or permit the Minister to **give a document** to a person and state that the Minister must do so by one of the methods specified in s 494B, the methods are as set out in the subsequent provisions of s 494B.

12 The methods specified in s 494B are as follows:

- Handing the document to the recipient.
- Handing the document to another person who is at the last residential or business address provided to the Minister by the recipient.
- Dating the document and then dispatching it by prepaid post or by other prepaid means to the last address for service provided to the Minster by the recipient or the last residential or business address provided to the Minister by the recipient.
- Transmitting the document by fax, email or other electronic means to the last fax number, email address or other electronic address provided to the Minister.

Section 494C provides for when a person is taken to have received a document from the Minister. Under s 494C(4), if the Minister **gives a document** to a person by the method in s 494B(4), which involves dispatching the document by prepaid post or by other prepaid means, the person is taken to have received the document, if the document was dispatched from a place in Australia to an address in Australia, seven working days after the date of the document.

13 Under s 66(2), **notification of a decision** to refuse an application for a visa must satisfy certain requirements as follows:

(a) if the grant of the visa was refused because the applicant did not satisfy a criterion for the visa, the notification must specify that criterion;

(b) if the grant of the visa was refused because a provision of the Act or the Regulations prevented the grant of the visa, the notification must specify the provision;

(c) the notification must give written reasons why the criterion was not satisfied or the provision prevented the grant of a visa; and

(d) if the applicant has a right to have the decision reviewed under Part 7 of the Act, the notification must state:

(i) that the decision can be reviewed; and

(ii) the time within which the application for review may be made; and

(iii) who can apply for the review; and

(iv) where the application for review can be made.

The terms of s 66(2)(d)(iv) are critical to the first ground raised by the Applicant.

14 Part 7 of the Act, which consists of Divisions 1 to 10, deals with the review of protection visa decisions. Division 2, which consists of ss 411 to 419 inclusive, provides for review of such decisions by the Tribunal. Under s 411, the Delegate's Decision in the present case is an RRT-Reviewable Decision for the purposes of Part 7. Section 412 deals with applications for review by the Tribunal. Under s 412(1), an application for review of an RRT-Reviewable decision:

(a) must be made in the approved form; and

(b) must be given to the Tribunal **within the period prescribed**, being a period ending not later than 28 days after the **notification of** the decision; and

(c) must be accompanied by the prescribed fee.

The language of s 412(1)(b) is of critical importance for the first ground.

15 Regulation 4.31 is also of critical importance to the first ground. Regulation 4.31(1) provides that, for the purposes of s 412(1)(b) of the Act, each period stated in r 4.31(2) is

prescribed as the period within which an application for review of an RRT-Reviewable Decision to which the period applies must be given to the Tribunal. Regulation 4.31(2)(b) relevantly provides that the period commences on the day on which an applicant is **notified** of the decision to which the application relates, and ends at the end of 28 days. Regulation 4.31(3) provides that an application must be lodged at a registry of the Tribunal:

(a) by posting the application to that registry; or

(b) by leaving it at that registry in a box designated for that purpose; or

(c) by leaving it with a person employed at that registry; or

(d) by means of electronic facsimile transmission to that registry.

16 Division 10 of Part 7 of the Act deals with the Registry and Officers of the Tribunal. Under s 471, the Minister is to cause a Registry of the Tribunal to be established.

17 Section 494B does not specify methods of **notifying** an applicant of a decision. Rather, it assumes, as contemplated by the language actually used in s 66(1) and reg 2.16(3), that any notifying of a decision will be effected by giving a document to the relevant applicant. Such an assumption appears to be based on the language of s 66(2). Thus, the language of s 494B is not entirely apt to satisfy r 2.16(3). Section 66(1) requires the Minister to **notify** an applicant in a particular way. Regulation 2.16(3) requires the Minister to notify an applicant by a method specified in s 494B. However, s 494B(1) speaks in terms of the Minister **giving a document** to a person, rather than notifying a person of something. The subsequent provisions of s 494B speak only in terms of giving or providing a document to a person. That may be of some significance in relation to the construction and effect of the relevant provisions.

FIRST GROUND: NOTIFYING THE DELEGATE'S DECISION

18 The terms of the Notification Letter are of vital significance for the first ground. The letter relevantly provided as follows:

> This letter refers to your application for a Protection (class XA) visa, which was lodged on 27 February 2009.
>
> I wish to advise you that the application for this visa has been refused…

> The attached Decision Record provides more detailed information about this decision…
>
> **Review rights**
>
> No further decision on this visa application can be taken at this office. However, you are entitled to apply to the Refugee Review Tribunal (RRT) for a review of the decision. An application for review of this decision must be made to the RRT within 28 calendar days after you are taken to have received this letter.
> …
>
> **RRT reviewable decisions**
>
> Applications for review can be lodged by any person at any registry of the Refugee Review Tribunal (RRT).
>
> Applicants in New South Wales, Queensland, the Australian Capital Territory or the Northern Territory can post or fax their applications to the New South Wales registry of the RRT. Applicants in Victoria, South Australia, Western Australia or Tasmania can post or fax their applications to the Victorian registry of the RRT.
> …
>
> The enclosed brochure Refugee Review Tribunal provides more information about the review processes and where applications for review can be lodged. Information about merits review is also available from the RRT on their website…
>
> **Lodgement of applications**
>
> You can lodge your application for review at the following registries:
>
> Registries of the RRT:
>
> | New South Wales | Victoria |
> | --- | --- |
> | Level 11, 83 Clarence Street
Sydney NSW 2000
… | Level 12, 460 Lonsdale Street
Melbourne VIC 3000
… |

It is common ground that the brochure referred to in the Notification Letter was not enclosed.

19 The Notification Letter informed the Applicant that she could lodge an application for review of the Delegate's Decision at the New South Wales registry or at the Victoria registry of the Tribunal. However, it is common ground that the Tribunal has an agreement with the Administrative Appeals Tribunal for that tribunal to provide certain services, which include receiving applications for review on behalf of the Tribunal. Accordingly, applications for review by the Tribunal can be lodged in Brisbane, Adelaide and Perth at the registries of the Administrative Appeals Tribunal. Whether or not those registries are properly described as registries of the Tribunal, the Minister accepts that an application for review lodged at one of

those registries should be taken to have been lodged at a registry of the Tribunal. Thus, the Minister accepts that the Applicant was not told **all** of the places where an application for review of the Delegate's Decision could have been lodged.

20 In the amended application filed in the Federal Magistrates Court on 18 May 2010, the first ground on which the Applicant claims relief is that the decision of the Tribunal is vitiated by jurisdictional error in that the Tribunal purported to exercise jurisdiction in circumstances where it had no jurisdiction. That claim is particularised as follows:

- The Tribunal's jurisdiction to review the Delegate's Decision only arose once the Applicant had been notified of the Delegate's Decision in accordance with s 66 of the Act.
- Under s 66(2)(d)(iv) of the Act, notification to the Applicant of the Delegate's Decision was required to state **all** locations where an application for review could be made, **not some**.
- The Notification Letter only stated two locations where an application for review could be made, whereas there were three further locations that were not stated in the Notification Letter, being the registries of the Administrative Appeals Tribunal in Brisbane, Adelaide and Perth.
- In the circumstances, the Notification Letter did not comply with s 66(2)(d)(iv) of the Act and, therefore, was invalid.
- As a consequence, there was no valid notification of the Delegate's Decision and the Tribunal's jurisdiction to review the Delegate's Decision was therefore not enlivened.

21 The Applicant contends that the consequence of a lack of valid notification is that a precondition of the Tribunal's exercise of jurisdiction was not met. She says that the Tribunal only has jurisdiction to review a decision if an application is lodged in a period that commences on the day on which the relevant applicant is notified of the decision, in a way that satisfies s 66(2), and ends at the end of 28 days after that day. In particular, she says, if an application is lodged prior to receipt of a notification that satisfies s 66(2), the Tribunal's jurisdiction to review the decision does not arise. She contends that an applicant will not be notified of a decision within r 4.3.1 unless there has been notification of the decision in a way

that satisfies s 66(2). The Applicant says that her application lodged on 2 June 2009 was not lodged during the relevant period because she has not yet been **notified** of the Delegate's Decision in a way that satisfied s 66(2). Therefore, she says, the Tribunal did not have jurisdiction to review the Delegate's Decision. She says that if and when she receives notification in accordance with s 66(2), she will have 28 days within which to make a valid application for review.

22 There are several propositions in the Applicant's contentions. The first is that, on the proper construction of s 66(2)(d)(iv), the notification of a decision must state **every place** where an application for review can be made. The second is that the consequence of any failure to satisfy that requirement is that the applicant will not have been **notified** within the meaning of reg. 4.31(2). The third is that an application for review by the Tribunal of a delegate's decision cannot be validly made prior to the day on which the applicant receives a notification in relation to that decision that satisfies s 66(2).

23 The Minster, on the other hand, contends as follows:

- Section 66(2)(d)(iv) does not require that notification of a decision must state the address of **every** place where a review application is capable of being lodged;
- Even if, contrary to the first contention, there was a non-compliance with the requirement of s 66(2)(d)(iv), that non-compliance was not material and was not of a kind that would have the consequence that the notification is ineffective, such that the Tribunal did not have jurisdiction to hear and determine the application for review; and
- The legislative provisions do not prevent the making of a valid application to the Tribunal for review prior to the giving of a notification that satisfies the requirements of s 66(2)(d)(iv) of the Act.

24 The Applicant placed reliance on the decision of the Court in *Hasan v Minister for Immigration and Citizenship* [2010] FCA 375 **(Hasan's Case)**. The Minister contends that that decision was wrong and should not be followed.

25 The judge of the Court exercising appellate jurisdiction in *Hasan's Case* considered that the ordinary and natural meaning of s 66(2)(d)(iv) is that the notification must state **all places** where an application for review may be lodged. His Honour considered that, because there is no restriction or limitation stated in respect of the places where an application may be lodged, the text of the section indicates that all available locations for giving an application must be stated. He said that the purpose or object of s 66(2) is to arm a disappointed applicant with full information to allow the applicant to challenge the delegate's decision and that the information must include anywhere the application for review can be made. His Honour considered that his view of the ordinary and natural meaning promotes the purpose or object of providing a visa applicant with the **fullest information** about the opportunity to bring an application for review.

26 His Honour considered that to adopt the alternative meaning, that the notification need only stipulate **any** place where an application for review may be lodged, could possibly have an unfair, inconvenient, irrational or unjust result. After giving examples of such possible results, his Honour concluded that the construction that requires the Minister to notify an applicant of **all places** at which an application for a review may be lodged avoids such confusion, inconvenience or injustice, with little extra burden placed on the Minister. His Honour therefore determined that s 66(2)(d)(iv) requires the Minister to include in the notification of a decision **every place** at which an application for review may be lodged. His Honour concluded that, since the notification under consideration by him did not satisfy s 66(2)(d)(iv), the prerequisite for the commencement of the period referred to in r 4.31(2)(b) had not been satisfied. Accordingly, the relevant period of 28 days had not expired and no valid application for review had been made to the Tribunal.

27 His Honour appears to have drawn a dichotomy between, on the one hand, stating **every** place where an application can be lodged and, on the other, stating simply **a** place where an application can be lodged. That dichotomy overlooks the possibility that, on its proper construction, s 66(2)(d)(iv) requires simply that the notification state those places where, in all of the circumstances of the case, it would be convenient or adequate for the purposes of the particular applicant.

28 The only requirement of s 66(2)(d)(iv) is that a notification must state where an application can be made. That requirement was satisfied in the present case. The Applicant had given the Minister an address in Harris Park where she resides. There was no suggestion that the Applicant would not receive a letter sent by registered mail to that address. In those circumstances, there was nothing unfair or inconvenient in telling the Applicant that she could lodge an application for review in Sydney or Melbourne. There has been no suggestion that the Applicant suffered any injustice by reason of the failure on the part of the Minister to state that an application for a review of the Delegate's Decision could have been made at a registry of the Administrative Appeals Tribunal in Perth, Brisbane or Adelaide.

29 In the present case, the Minister notified the Applicant of the Delegate's Decision in a manner that was calculated to inform her fully of everything she needed to know in order to make a decision as to whether to apply to the Tribunal for review of the Delegate's Decision. She decided to do so and made an application that complied with s 412(1). It was made in the approved form and it was given to the Tribunal within the period of 28 days after the Applicant was taken to have been notified of the Delegate's Decision.

30 In any event, even if the provision were to be properly construed as requiring a statement of every place where an application for review could be made, the same reasoning leads to the conclusion that any failure, in the present case, to comply strictly with the procedural requirements of the Act and the Regulations was not of a nature that would render the application lodged by the Applicant on 2 June 2009 a nullity. It is not possible to glean, from the language of the provisions in question, an intention on the part of the Parliament to invalidate a process simply because an applicant was not told that an application for review could be lodged at a place which was of no relevance or significance, so far as that particular applicant was concerned. While the Parliament may be taken to have intended that compliance with the requirements of s 66(2) would discharge the Minister's obligation with respect to the giving of timely and effective notice of a decision, it does not follow that it was the intention that any departure from those steps would result in invalidity, without consideration of the extent and consequences of the departure (see *Minister for Immigration and Citizenship v SZIZO* (2009) 238 CLR 627 at [35]).

31 Clearly enough, there will be circumstances where it may be unfair or inconvenient for a particular applicant to be required to make an application at any of the relevant places. For example, an applicant who lives in a remote country location may find it unfair or inconvenient to lodge an application in a capital city. An applicant who resides in Hobart may find it unfair or inconvenient to have to lodge an application in Melbourne, Adelaide, Sydney, Perth or Brisbane. That possibility exists under the current arrangements. That could not constitute a failure to comply with s 66(2)(d)(iv).

32 On the other hand, there may be circumstances where it would be unfair or inappropriate not to inform an applicant who resides in, say, Perth that an application for review could be lodged at the registry of the Administrative Appeals Tribunal in Perth. To tell such an applicant only that an application can be lodged in Sydney, may, in particular circumstances, constitute a failure to comply with s 66(2)(d)(iv). That is not this case.

33 Assuming that r 4.31 is valid and that, on its proper construction, it refers to a period that does not commence before an applicant has been notified of a decision, it does not follow that the jurisdiction of the Tribunal is conditional upon a valid application being lodged only during that period. Clearly enough, the object of specifying an end time is to facilitate administrative certainty in determining whether or not a visa application has been finally determined.

34 However, fixing a time before an application may be made does not encourage certainty. If anything, having regard to the provisions determining when a document is taken to have been received by a recipient, such a requirement could operate unjustly and unfairly. For example, a recipient who received notification might lodge an application before the notification was taken to have been received by the operation of s 494C(4). If the application were not re-lodged, such a recipient may be deprived of the opportunity of a review.

35 The Parliament cannot be taken to have intended that a valid application that was actually physically within a registry of the Tribunal during the closed period in question should be treated as ineffective simply because it was received by the registry before the commencement of the relevant period. The clear object of the provisions is to ensure administrative certainty as to when a visa application has been finally determined. There is nothing to suggest that the intention, in enacting the relevant provisions of the Act or in

making relevant provisions of the Regulations, was that the making of an application for review to the Tribunal before being notified of a decision in accordance with s 66(2) would have the consequence that the Tribunal has no jurisdiction to entertain the application for review. Indeed, it may be that circumstances could arise where, even though there were not strict compliance with the requirements for a valid application, the jurisdiction of the Tribunal would still be enlivened, so long as an application that substantially complied was received before the expiration of the relevant period. That, however, is not this case and a determination of that question should await another day.

36 The jurisdiction of the Tribunal was properly enlivened in the present case. To the extent that the decision in *Hasan's Case* suggests otherwise, that decision should not be followed.

SECOND AND THIRD GROUNDS: THE TRIBUNAL'S DECISION

37 The second and third grounds relied on by the Applicant require a consideration of the Applicant's visa application to the Minister as well as the reasons for the Delegate's Decision and the Tribunal's reasons for its decision. In her visa application, the Applicant stated that she was a housewife from Cameroon, more than 60 years old, who has never worked. She attended a Catholic school and attained a higher school certificate. She is widowed and has a number of children. In response to the question in the visa application form about what she feared would happen to her if she returned to Cameroon, the Applicant stated that she had been threatened, beaten and tortured mentally and physically and that she was afraid for her life. She said she was afraid of the corrupt justice in Cameroon, the non-hygienic gaol conditions and the barbaric acts of the forces of law and order, shooting and killing innocent citizens, and that she was afraid of the Muslim community. She said that, after all she had been through, her life was not guaranteed. She asserted that her entire life was a struggle with hardship and all the bad things that had happened to her.

38 The Applicant listed the following as those whom she feared would harm or mistreat her if she returned to Cameroon:

- the gendarmerie;
- members of the ruling party (CPDM);

- undercover police (anti-gang);
- Muslim community (Haoussa);
- the justice system (corrupt);
- the local chief;
- the chief's army; and
- gaol conditions.

The Applicant said that she believed she would be harmed because it has happened to many and still continues to happen today. She said that she had been warned many times and that she had been beaten, gaoled, tortured, harassed and threatened. She said that many are dying in such poor conditions in gaol in Cameroon and that the system had failed. She said that one cannot protect oneself and cannot protect one's own people. She said she had been brutally abused and intimidated during her entire life.

39 In response to a question about whether the authorities in Cameroon would protect her, the Applicant said that, in Cameroon, the authorities will never protect you if you are always opposing them. She said that she had been a leader of a women's opposition party for many years, the Social Democratic Front, and that she was and still is against the non-democratic idea. She said that the higher ranks in the forces of law and order are always appointed by the ruling party, so most of the forces of law and order are working for the government, not for the people. She asserted that they are serving the ruling party and not the people.

40 The Applicant submitted a three page typed document with her visa application. The first page and the start of the second page recounted specific instances concerning the Applicant's alleged involvement in politics and political activity. The document then asserted that the Applicant was the chairperson of an association created to protect the rights of Muslim women in her community who were being abused. The document then set out the plight of Muslim women in Cameroon. Those general assertions were followed by a statement that the Applicant originally came from a Christian background but was married to a Muslim man and that, after a few months of marriage, her husband's family requested that she be circumcised. The document states that the Applicant refused and that, although her

husband's family told her that that was part of their culture and it must be performed, she still refused. The document then recounted specific instances of young Muslim women, including the Applicant's daughter, and said that, as the chairperson of the association referred to above, the Applicant summoned an urgent meeting and called on the women to make demonstration against the treatment of her daughter. The document then recounted in detail other specific instances of the Applicant's alleged political activity.

41 The record of the Delegate's Decision, which was enclosed with the Notification Letter, set out in some detail the specific claims made by the Applicant in her visa application. There was no mention in the record of a claim to the effect that the Applicant feared harm simply because she is a Muslim woman. In dealing with her claims, the delegate said that the Applicant claimed she faced persecution in Cameroon and would do so upon return because she is a supporter of the Social Democratic Party in that country. The delegate also recorded that the Applicant claimed she would be persecuted by the local chief because of actions that she, as chair of the neighbourhood's Protection of Muslim Women's Rights Group, took as a form of protest against his decisions. The delegate found that the Applicant does not have a genuine fear of harm and that there is not a real chance of persecution occurring.

42 No additional information was provided to the Tribunal in support of the Applicant's claims. That is to say, it was not suggested to the Tribunal that the delegate had overlooked the claims that the Applicant now contends were overlooked by the Tribunal.

43 The Tribunal said in its findings that the Applicant claimed to have been harmed on account of her political activities with the Social Democratic Front and work with the women's group. However, the Tribunal considered that problems with the Applicant's evidence and information presented in support of her claims raised concerns about her credibility and the credibility of her claims. The Tribunal then dealt in some detail with those specific claims and the inconsistencies that led it to the conclusion that it regarded the Applicant as lacking in credibility.

44 The Tribunal set out *verbatim* the Applicant's three page written statement. The Tribunal said that it found that parts of the written statement concerning the plight of women in Cameroon were almost identically worded to information found on the internet. At the

hearing, the Tribunal told the Applicant that it seemed that parts of her statement were plagiarised from sources found on the internet and put to the Applicant that that raised concerns about her credibility and the truth of her claims. The Applicant's response was that she does not write or read English and that they were not her words. She said that she wrote her words in French and then gave it to "them". She said that she did not really know what was written there.

45 At the second hearing, the Tribunal told the Applicant that information that she had provided during her interview with the delegate and the oral evidence given by Ms Dan at the first hearing before the Tribunal was information that might form part of the Tribunal's reasons for affirming the Delegate's Decision. The Tribunal told the Applicant that the oral evidence that she and Ms Dan gave the Tribunal about how her written statement submitted was prepared did not appear consistent. The Tribunal told the Applicant that:

- Ms Dan had testified that the Applicant dictated the statement to Ms Dan, who wrote the statement down in French and translated it into English, using computer translation software with the help of a friend;
- Ms Dan testified that 95% of the words in the written statement were the Applicant's;
- significant portions of the written statement appeared plagiarised from sources the Tribunal had found on the internet;
- the Applicant had testified that she wrote the statement in French, rather than dictating it as Ms Dan testified;
- those apparent inconsistencies were relevant as they indicated that the Applicant and Ms Dan had not been truthful and raised doubts about the Applicant's credibility and the credibility of her refugee claims;
- those matters could lead the Tribunal to find that her claims were not true and that she was not a refugee.

The Applicant responded that she did not have any comments she wished to make.

46 The Tribunal also pointed out to the Applicant at the second hearing that, in response to being asked by the delegate why she decided to leave Cameroon two years after her

passport was issued, she replied that she was being annoyed, apparently by her husband's family and her house was burned down. However, she made no mention of those reasons in her written statement. The Tribunal told the Applicant that that was relevant because it raised doubts about whether she had indeed left Cameroon for those reasons and raised doubts about her credibility and the truthfulness of her claims. When invited to comment or respond, the Applicant said that she had not a thing more to say. At the conclusion of the second hearing, the Applicant said that she had no further evidence.

47 The Tribunal is obliged to consider all claims and component integers raised by an applicant, or otherwise squarely raised on the material before it. The Applicant contends that the Tribunal failed to consider a claim that was squarely raised on the material presented by her. In addition, she contends that the Tribunal asked itself the wrong question. The Applicant contends that the statements concerning the position of Muslim girls and women in Cameroon amounted to a clearly articulated claim that women in Cameroon are subject to systematic and discriminatory treatment amounting to serious harm and that the Applicant fears harm because she is a woman. She asserts that the Tribunal did not regard the statements in the Applicant's visa application as raising a claim with which the Tribunal was obliged to deal.

48 The Tribunal's reasons contain the following passage:

> Although the applicant referred to the negative status of women in Cameroon, she has not identified any specific harm she would suffer in the reasonably foreseeable future because she is a women [sic] other than those arising from her association with the women's group and the forced marriage of one of her daughters, which the Tribunal has not accepted. Thus, the Tribunal finds that the applicant would not suffer serious harm amounting to persecution if she returned to Cameroon because she is a woman.

49 The Applicant complains that, in the light of that passage, the Tribunal approached her assertions as though they did nothing more than set out information about the negative status of women in Cameroon, rather than amount to a claim in her own right and that the Tribunal failed to consider whether the harm that the Applicant claimed to fear was for reason of her membership of a particular social group, namely, women, and to deal with that claim. She complains about the Tribunal's conclusion that the claims were too general to give rise to a well-founded fear of persecution for a Convention reason. The Applicant says

that the systematic and discriminatory conduct against a particular social group, namely women, of the nature described in her written statement, was capable of amounting to serious harm. She asserts that it was sufficient that she identified harm that will be faced by any member of that group and that it was not necessary for her to go on to identify any specific harm that she would face over and above that to which any member of the group would be subjected.

50 On a fair reading of the written statement, the context of the narrative concerning the plight of Muslim women indicates that it was simply to explain why the Applicant claimed to have become involved in politics. The Tribunal rejected those claims. There was nothing in the material provided by the Applicant to the Minister in support of her visa application that required the Tribunal to deal with a claim, that was not articulated or even hinted at, that the Applicant feared harm in Cameroon simply because she was a Muslim woman.

51 The Tribunal referred expressly to the general assertions made by the Applicant. However, there was no substantial, clearly articulated argument, based upon established facts, to be found in the Applicant's material, other than fear of persecution by reason of conduct that the Tribunal did not accept had happened. There was nothing that required the Tribunal to examine the question of whether the Applicant feared persecution simply because she was a Muslim woman. Grounds 2 and 3 have not been established.

CONCLUSION

52 None of the three grounds raised by the Applicant has been established. It follows that the proceeding must be dismissed.

I certify that the preceding fifty-two (52) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Emmett.

Associate:

Dated: 30 June 2010

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
GENERAL DIVISION **NSD 616 of 2010**

BETWEEN: **SZOFE**
Appellant

AND: **MINISTER FOR IMMIGRATION AND CITIZENSHIP**
First Respondent

REFUGEE REVIEW TRIBUNAL
Second Respondent

JUDGES: **EMMETT, BUCHANAN AND NICHOLAS JJ**
DATE: **30 JUNE 2010**
PLACE: **SYDNEY**

REASONS FOR JUDGMENT

BUCHANAN AND NICHOLAS JJ:

53 The claims of the applicant in this matter, a citizen of Cameroon, to be a refugee to whom Australia owes protection obligations were rejected by the Refugee Review Tribunal ("the RRT") established under the *Migration Act 1958* (Cth) ("the Act"). The RRT made its decision after the applicant had sought review by it of a decision of a delegate of the first respondent to refuse her a visa. The first argument now advanced by the applicant in support of her claim that the decision of the RRT should be set aside for jurisdictional error is that the RRT never became seized of jurisdiction to deal with the application which she made to it. She also claims, if that argument is rejected, that there were particular respects in which the RRT failed to exercise its jurisdiction in accordance with the requirements of the Act and thereby committed jurisdictional error in any event.

54 The applicant arrived in Australia on 15 January 2009 and applied for a protection visa on 27 February 2009. On 22 May 2009 a delegate of the Minister refused to grant a visa to her, concluding that she was not a person to whom Australia owed protection obligations. The delegate who interviewed the applicant rejected her claims to be a political activist. The delegate was also not persuaded that she was at risk of persecution because of her claimed

activities relating to the protection of Muslim women's rights in Cameroon or that she had, in the past, been treated adversely for such activities to the extent that she had claimed. The claims were made in written statements attached to the application for a protection visa but the delegate found, in effect, that these claims were not supported adequately or made out at the interview.

55 The applicant was advised by letter dated 22 May 2009 that her claim for a protection visa had been refused. On 2 June 2009 she lodged an application at the Sydney registry of the RRT for review of the delegate's decision. The RRT conducted two hearings at which it received evidence from the applicant. At the first of those hearings it also received evidence from a witness at the applicant's request. On 9 February 2010 the RRT handed down a written decision affirming the decision of the delegate not to grant a protection visa to the applicant. She commenced proceedings for judicial review in the Federal Magistrates Court of Australia. That application was transferred to this Court and the Chief Justice directed that it be dealt with by a Full Court.

56 Section 66 of the Act requires that when notified of the delegate's decision the applicant must be told that she had a right to have the decision reviewed, advised of the time in which the application for review may be made and, relevantly for the present proceedings, "where the application for review can be made" (s 66(2)(d)(iv)). As earlier indicated, the applicant was notified of the delegate's decision by letter dated 22 May 2009. The letter informed the applicant, amongst other things, of the following:

> Applications for review can be lodged in person at any registry of the Refugee Review Tribunal (RRT).
>
> Applicants in New South Wales, Queensland, the Australian Capital Territory or the Northern Territory can post or fax their applications to the New South Wales registry of the RRT. Applicants in Victoria, South Australia, Western Australia or Tasmania can post or fax their applications to the Victorian registry of the RRT.

and:

> You can lodge your application for review at the following registries:
>
> Registries of the RRT:
>
> <u>New South Wales</u>
> Level 11, 83 Clarence Street
> Sydney NSW 2000 Telephone (02) 9276 5000
>
> <u>Victoria</u>
> Level 12, 460 Lonsdale Street
> Melbourne VIC 3000
> Telephone (03) 8600 5900

Fax (02) 9276 5599 Fax (03) 8600 5801

57 Under arrangements between the RRT and the Administrative Appeals Tribunal ("the AAT") (which is established under the *Administrative Appeals Tribunal Act 1975* (Cth)), applications for review by the RRT may also be lodged at registries of the AAT in Brisbane, Adelaide and Perth. The applicant was not told that such a facility existed.

58 The applicant has always given, as her residential address in Australia, an address at Harris Park in New South Wales. When she lodged her application for review in the RRT she did so at the Sydney registry of the RRT. It is clear, as a matter of fact, that no prejudice was suffered by her from the failure to draw to her attention the possibility that an application for review might be lodged at a registry of the AAT in Brisbane, Adelaide or Perth. However she now relies upon a decision of a judge of this Court given on 22 April 2010 (*Hasan v Minister for Immigration & Citizenship* [2010] FCA 375 ("*Hasan"*)), after the hearing and decision of the RRT, to the effect that a failure to advise a potential applicant for review of the facility of lodging an application for review at registries of the AAT in Brisbane, Adelaide and Perth constitutes a failure to comply with the provisions of the Act which is fatal to the jurisdiction of the RRT. In *Hasan*, North J concluded that it was necessary to advise a potential applicant for review of all places where such an application might be made. His Honour considered that a failure to comply with this requirement had the consequence that no notification was given as required by the Act. He expressly disagreed with a conclusion expressed by Jagot J in *Maroun v Minister for Immigration and Citizenship* [2009] FCA 1284 ("*Maroun"*) that s 66(2)(d)(iv) of the Act does not require the identification of all places where an application for review can be made.

59 Before dealing with the construction of s 66(2)(d)(iv) of the Act, it is desirable to refer to an additional feature of the statutory arrangements. Section 412 of the Act requires that an application must be made to the RRT "within the period prescribed, being a period ending not later than 28 days after the notification of the decision" (s 412(1)(b)). In *Hasan*, North J considered the operation of a similar provision which appears in s 347(1)(b) of the Act, relating to the Migration Review Tribunal established under the Act. In relation to s 347(1)(b), reg 4.10(1)(a) of the *Migration Regulations 1994* (Cth) ("the Regulations") made under the Act provides that the period "starts when the applicant receives notice of the decision and ends at the end of 21 days after the day on which the notice is received". In the

case of s 412(1)(b), reg. 4.31(2) prescribes that the period (relevant to the present case) "commences on the day on which the applicant is notified of the decision to which the application relates, and ends at the end of … 28 days". For present purposes, the formulations in regs 4.10(1)(a) and 4.31(2) are indistinguishable except as to the length of time prescribed.

60 In *Hasan*, North J concluded (at [29]):

> The regulation appears to establish an envelope of time with a beginning and an end. It seems to require that the application be given to the Tribunal within that envelope. On this view, an application given after the end of the period would not comply with the requirement. Similarly, an application given before the start of the period would not comply with the requirement.

61 It is necessary to appreciate the reason why North J felt it appropriate to deal with this question. In *Hasan*, the applicant had filed an application for review nearly five months after notification of the decision of a delegate. The Tribunal in that case, the Migration Review Tribunal ("the MRT"), held that it did not have jurisdiction to deal with an application filed outside the prescribed period. Based on the argument arising from the requirements of s 66 of the Act, the appellants in *Hasan* sought orders compelling the MRT to hear and determine the application for review which had earlier been filed by them. North J held, in light of his conclusions about the requirements of s 66: that no effective notice of the delegate's decision had been given in that case; that time within which to file an application to review the delegate's decision had not commenced; and that the MRT had no jurisdiction to deal with an application filed before the commencement of the relevant period. He declined to make the order sought and said that the appropriate relief was an order directed to the Minister to provide proper notice of the delegate's decision. For reasons which will subsequently appear it is not strictly necessary to deal with this issue in the present case but it is desirable that something should be said about it.

62 We agree with North J that the language of the Regulations (reg 4.10 and reg 4.31) appears to establish an envelope of time within which an application must be made. That is so because they state that the period within which an application may be made "starts" (reg 4.10) or "commences" (reg 4.31) when notification of the decision occurs. We do not accept the submission made by the Minister in the present case that if the Regulations have that effect they are inconsistent with the sections which empower them. Each of s 347 and s 412

permit a prescription of time which ends not later than 28 days after notification of the decision. Neither s 347 nor s 412 exclude the possibility that the period between the decision and notification of it will not be a period during which an application might be made. Perhaps that was not intended by the drafter of the regulation but the language is sufficiently clear and must take priority over assumed, or even expressed, intent (*Saeed v Minister for Immigration and Citizenship* [2010] HCA 23 at [31]-[33]). It may be that it was not anticipated by those who drafted ss 347 and 412, or by the Parliament, that by delegated legislation a commencement to a prescribed period might be established, but neither section in our view excludes a regulation having that effect provided any period fixed does not extend beyond 28 days after notification of the decision. Neither reg 4.31 nor reg 4.10 has that effect.

63 Regulation 4.31 identifies the period to which it refers as one which "commences on the day on which the applicant is notified …". Under s 494C of the Act a document sent by mail within Australia (as it was in the present case) is taken to have been received 7 working days after the date of the document. In the present case, if the notification to the applicant by letter dated 22 May 2009 was effective, the notification was deemed to have been received on 2 June 2009. That is the day on which the applicant lodged her application for review with the RRT. On the facts of this case at least there is no difficulty arising from the terms of reg 4.31 unless there was, as the applicant contends and as was found in *Hasan*, no notification from which the prescribed period might commence. However, looking at the position more generally, there is another reason why lodging an application before the time of deemed receipt of the notification would not, in our view, despite the meaning we have attributed to reg 4.31 and reg 4.10, be ineffective. That reason arises from the considerations to be discussed in relation to s 66.

64 We find ourselves in disagreement with North J in *Hasan* insofar as his Honour stated a general rule about the requirements of s 66(2)(d)(iv). The present case is an example of the necessity to test the question whether jurisdictional error has resulted from an alleged failure to comply with a statutory requirement by reference to the particular circumstances of the case in question. It is not necessary to decide in the present case whether the failure to draw to the attention of a potential applicant for review the facility of lodging an application at a

registry of the AAT in Brisbane, Adelaide or Perth would constitute a jurisdictional error in some circumstances. It does not do so in the present case.

65 There is no doubt in the present case that there was a notification of the decision made by the delegate which was, in every practical sense, effective to put the applicant on notice of her rights of review as contemplated by s 66 of the Act. As a result of the notification, the applicant applied to the RRT in Sydney, at the address provided in the letter to her. Sydney is where she lived. Any failure to notify the applicant of the possibility that she might file an application for review at the AAT in Brisbane, Adelaide or Perth (as well as at the RRT in Sydney or Melbourne) had no adverse consequences for the applicant. The applicant's argument can only succeed if the procedural direction in s 66(2)(d)(iv) is first interpreted as requiring notification of all possible places of lodgement (whether with the RRT directly or through the AAT) to all potential applicants for review regardless of where they reside. Furthermore, the argument can only succeed if such a requirement is seen as fundamental to the exercise of any jurisdiction by the RRT even if a potential applicant is effectively notified of a decision and, in response, files an application for review in the required manner and within the required time. Neither premise should be accepted. The reasons why neither premise should be accepted are interconnected.

66 In the case of an administrative tribunal, it is frequently necessary to consider the consequences of a departure from a statutory (or other) requirement before concluding that jurisdictional error has been committed (*Craig v The State of South Australia* (1995) 184 CLR 163 at 179-180; *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at [82]; *Minister for Immigration and Citizenship v SZIZO* (2009) 238 CLR 627 at [35]-[36] (*"SZIZO"*)). The exercise of jurisdiction by the tribunal must be, in some way, "affected" by the error or failure alleged. Counsel for the applicant submitted that the principle had no application in the present case because the failure of which the applicant complained did not arise during the process set in train by her application to the RRT but, rather, prevented that process from being commenced. The failure to specify all places at which her application might be made was said to be fatal to any application by her even though there were no adverse consequences, procedural or otherwise, from the alleged failure.

67 However, in our view there cannot be an adequate assessment of whether the requirements of s 66 of the Act have been breached, or of whether the jurisdiction of the RRT was not engaged, without some examination of the consequences of the alleged non-compliance. The judgment of the High Court in *SZIZO* has expressly drawn attention to the need to evaluate the practical consequences of failure to comply with procedural obligations under the Act. It is no longer possible, if it ever was, to speak of "imperative obligations" under the Act without specific attention to the purposes they are intended to serve. If the asserted failure to comply with s 66 is tested in that manner then the proposition that in all cases potential applicants for review must be advised of all places at which an application might be lodged, or to which it might be sent, cannot be sustained. The consequences of an alleged lack of information need to be assessed in a particular case.

68 If a potential applicant in Queensland, South Australia or Western Australia was denied an effective or adequate opportunity to make an application for review (despite being told they could do so by mail or fax to a registry of the RRT in Sydney or Melbourne) because they were not told their application might be accepted by the AAT in Brisbane, Adelaide or Perth, it is conceivable that there might be some room for the argument advanced in this case. Whether or not that was so would depend on all the circumstances of such a case. It is neither necessary nor desirable to attempt to answer such questions in the abstract. However, the possibility that some potential applicant might in some circumstances be denied an adequate or effective opportunity to exercise a statutory right to initiate a review of a delegate's decision does not have the consequence for which the applicant contends as a general rule. So far as her own circumstances are concerned, that proposition cannot be sustained either. In our respectful view the analysis in *Hasan* cannot be reconciled with the principle stated in *SZIZO*. *Hasan* should not be followed on this point.

69 The need to test any non-compliance with procedural requirements against the consequences in a particular case also resolves any difficulty which might have arisen in the present case from the operation of reg 4.31. On the facts of the present case the application made on 2 June 2009 would not have been ineffective to initiate a review by the RRT even if it had been lodged before the date of deemed receipt of the notification because no adverse consequence of any kind would be visited upon the applicant from early receipt of the

application by the RRT. It is difficult to envisage a case where such a conclusion would ever be justified but it is not necessary to give a universal answer to that question.

70 For the reasons so far expressed, the applicant's contention that the RRT had no jurisdiction to deal with the application for review which the applicant lodged on 2 June 2009 should be rejected.

71 Rejection of the argument based on s 66 of the Act makes it necessary to consider the two alternative contentions advanced by the applicant to the effect that the jurisdiction of the RRT miscarried because it failed to deal, as required by the Act, with the applicant's claims and misunderstood the law.

72 Large parts of the applicant's claims about circumstances in Cameroon, and the way in which women were treated in that country, were found by the RRT to be identical, or almost identical, to commentaries found on the internet. Three such commentaries were identified. Nevertheless, the applicant insisted that her claims were written by her personally in French and then translated into English. When it stated its "Findings and Reasons", having set out the material and evidence from which those findings and reasons were drawn, the RRT did not deal again explicitly with this issue. However, it concentrated not surprisingly on those aspects of the applicant's claims which appeared to relate to the prospect of personal harm rather than generalised comments of the kind in the internet material or set out in the applicant's written claims. The RRT was not in error to take that approach.

73 A number of discrepancies between the applicant's written claims and her oral evidence to the RRT were also identified by the RRT, who raised these matters with the applicant at the hearing. For various reasons, the RRT found that the applicant was not credible. It did not accept her claims. It rejected her contention that she had a well-founded fear of persecution. The assessment of the significance of these matters was within the province of the RRT. Provided the RRT did not misunderstand the nature of its inquiry, or misapply itself to its functions, no jurisdictional error was committed even if its findings left room for legitimate argument on the merits.

74 In our view it has not been demonstrated that the RRT failed to understand or address the applicant's claims, either generally or in specific respects. In particular the RRT did not,

as counsel for the applicant submitted, fail to consider relevant claims arising from the treatment of women in Cameroon. As the submissions for the first respondent pointed out, any claims about the treatment of women in Cameroon had to be sufficiently related to the personal circumstances of the applicant. In that respect the RRT found:

> 102. Although the applicant referred to the negative status of women in Cameroon, she has not identified any specific harm she would suffer in the reasonably foreseeable future because she is a women [sic] other than those arising from her association with the women's group and the forced marriage of one of her daughters, which the Tribunal has not accepted. Thus, the Tribunal finds that the applicant would not suffer serious harm amounting to persecution if she returned to Cameroon because she is a woman.

This finding illustrates that the RRT considered, but rejected, the applicant's claim that she would be at risk as a woman in Cameroon.

75 Similarly, as submissions for the first respondent also pointed out, a claim by the applicant on the present application that the RRT had failed to adequately address whether the harm feared by the applicant would be "serious harm" (see s 91R(1) of the Act) should not be accepted. As the RRT did not accept that the applicant faced relevant harm in Cameroon, the question of whether her claim was one about "serious harm" did not require separate attention.

76 The application for judicial review of the decision of the RRT should be dismissed.

I certify that the preceding twenty-four (24) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justices Buchanan and Nicholas.

Associate:

Dated: 30 June 2010