

# FEDERAL MAGISTRATES COURT OF AUSTRALIA

*SZGLT v MINISTER FOR IMMIGRATION & ANOR* [2008] FMCA 233

MIGRATION – RRT decision – Philippine applicant suffering extortion by MILF insurgents – whether failure by Tribunal to address financial persecution claim – failure to consider practical realities facing applicant and family in relation to relocation – failure to address reasons for previous remitter – matter again remitted.

*Migration Act 1958* (Cth), ss.91R, 91R(1)(b), 91R(2)(d), 424A(1)

*Minister for Immigration & Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259

*NAIZ v Minister for Immigration & Multicultural & Indigenous Affairs* [2005] FCAFC 37

*Randhawa v Minister for Immigration, Local Government & Ethnic Affairs* (1994) 52 FCR 437

*SZATV v Minister for Immigration & Citizenship* (2007) 237 ALR 634

*SZBEL v Minister for Immigration & Multicultural & Indigenous Affairs* (2006) 228 CLR 152

*SZBYR v Minister for Immigration & Citizenship* [2007] HCA 26

*SZEPY v Minister for Immigration & Anor* [2006] FMCA 31

*SZGLT v Minister for Immigration & Multicultural Affairs* [2006] FCA 1749

Applicant:	SZGLT
First Respondent:	MINISTER FOR IMMIGRATION & CITIZENSHIP
Second Respondent:	REFUGEE REVIEW TRIBUNAL
File Number:	SYG 1856 of 2007
Judgment of:	Smith FM
Hearing date:	20 February 2008
Delivered at:	Sydney
Delivered on:	20 February 2008

## **REPRESENTATION**

Counsel for the Applicant: Applicant in person

Counsel for the First Respondent: Ms L Clegg

Solicitors for the Respondents: DLA Phillips Fox

## **ORDERS**

- (1) A writ of certiorari issue directed to the second respondent, quashing the decision of the second respondent handed down on 24 May 2007 in matter 071138150.
- (2) A writ of mandamus issue directed to the second respondent, requiring the second respondent to determine according to law the application for review of the decision of the delegate of the first respondent.

**FEDERAL MAGISTRATES  
COURT OF AUSTRALIA AT  
SYDNEY**

**SYG 1856 of 2007**

**SZGLT**  
Applicant

And

**MINISTER FOR IMMIGRATION & CITIZENSHIP**  
First Respondent

**REFUGEE REVIEW TRIBUNAL**  
Second Respondent

**REASONS FOR JUDGMENT**

**(revised from transcript)**

1. The applicant came to Australia in November 2004 from the Philippines, and lodged an application for a protection visa on 9 December 2004. Her visa application attached a statement explaining that she was a qualified secondary school teacher, whose family lived in a province, Lanao Del Norte, where a terrorist political group called the Moro Islamic Liberation Front (MILF) were active. Her family were Catholics and had agricultural property, and her husband had a small business. She had four children.
2. Her statement explained why she came to Australia without her family, as a result of MILF extortionate demands made on her family and other people in her village. She said (with some improvements to punctuation):

*Their activities are very strong in my province. We are scared about that group, and the government does nothing for this problem so we use to take care of our village in shift basis. Day and night we use to grad our village, and me and my other family members are very soft, as and when they demands they use to pay some money and manage for some time. Slowly they MILF started demanding big amounts of money, which is not affordable for our family, then they started troubling our family saying they will kill all of our family members and take over all of our properties. I scared and left the country for these reasons. And my family member are also scared, because I am working as teacher. This terrorist group is linked with Jamie Is lamia and they support each other. They use to demand some part of my salary every month which is impossible for me. Since then I stopped working. Life become very difficult to live and survive.*

She also claimed:

*MILF will kill me. I have potential life threat from them. Main reason I am the person mainly refused to pay money for them.*

3. A delegate refused the application on 20 December 2004, and the applicant appealed to the Refugee Review Tribunal. She attended a hearing on 25 February 2005 in which she gave evidence. According to the summary provided by the Tribunal as presently constituted, this included:

*In response to questions from the presiding Member, the applicant described the system of the MILF exacting “taxes” from people in her region, including her family. She said she and her husband were taxed more than others because she had a good salary and he had a business. They were threatened if they said that could not pay. She in particular was threatened because, so she was told, she was the only one in the family to object to paying taxes to the MILF.*

4. A decision was made by the Tribunal as originally constituted, which was handed down on 19 May 2005 and affirmed the delegate’s decision. That decision was quashed by order of Dowsett J, on appeal in the Federal Court (see *SZGLT v Minister for Immigration & Multicultural Affairs* [2006] FCA 1749). His Honour’s reasons are found in the following paragraphs of his judgment:

*24 In the course of the hearing of this appeal I became concerned that the Tribunal may not have fully understood*

*the ambit of the appellant's claim, in particular that she claimed to fear economic persecution as well as physical violence, and that such fear was of persecution for political belief (her opposition to extortion) and, arguably, for membership of a social group (those who could pay and/or had spoken out against extortion). Of course, in any case based on economic persecution it would be necessary to show that the relevant extortion was likely to threaten the capacity of the appellant and her family to subsist. However the present question is whether or not the Tribunal identified these questions as part of the appellant's claim and dealt with them. This point was raised in the written submissions made before the magistrate. They were apparently drafted by somebody other than the appellant. Economic hardship is a major theme of that document. The issue was also raised in the appellant's visa application. The magistrate recognized it as an issue at [10] et seq of his reasons. However, because of the way in which he dealt with the various grounds of appeal, he seems not to have considered whether or not the Tribunal had addressed the question.*

25 *It is of some importance that the Tribunal accepted that the appellant's family had paid the "revolutionary tax", and that she had subsequently counselled her family against doing so. It seems that at some stage, she had also paid the "tax". The Tribunal's reasons for concluding that it was not satisfied that she had ever come to the adverse attention of the MILF rebels were not all relevant to the question of economic persecution. It was hardly relevant to that question that she had not told anybody about her claims concerning extortion, given that the Tribunal accepted that it had occurred. Similarly, her conduct in returning from the United Arab Emirates was not necessarily inconsistent with a fear of economic persecution, given that her family would be exposed to such persecution whether she was in the Philippines or elsewhere.*

26 *The appellant's fear of economic persecution was a rather more subtle point than was her fear of violence. In the visa application, she claimed that extortion made life financially difficult. One might reasonably have expected the Tribunal to question her about that subject in more detail than it did, had it understood the nature of the claim. That the Tribunal may not have addressed the question is also suggested by the way in which it dealt with the question of relocation. It*

*appears to have decided that it was reasonable for the appellant to relocate, saying that the appellant's siblings were living in Manilla. However the evidence was that one of her siblings had returned from Manilla because she was finding life financially difficult in that city. Secondly, the Tribunal found that the appellant had sufficient resources to enable her to live in Manilla, namely her family's resources and her husband's income. One assumes, however, that if she were to relocate to Manilla it would be with her family. It could hardly be reasonable to expect her to do otherwise. In that case her husband would be deprived of the income from his business and would be forced to look for work in Manilla with the difficulties attendant thereon. Further, the suggestion that as the appellant was a person with professional qualifications and demonstrated resourcefulness, she could make her way in Manilla notwithstanding the corrupt and nepotistic environment, seems to overlook the capacity of such factors to cause difficulties even to the qualified and resourceful. In my view the financial considerations incidental to relocation were addressed in a particularly superficial way. Had the Tribunal appreciated the appellant's concerns about economic persecution, it would have given more attention to the financial implications of relocation.*

27 *This is a marginal case. I am aware of the need to adopt a fair reading of the Tribunal's reasons, having particular regard to the fact that it is an administrative Tribunal and not a court. However, in the end, I have concluded that the Tribunal failed to appreciate the full range of the appellant's claims to refugee status, particularly those aspects which related to financial persecution. I do not suggest that this aspect of the appellant's case was strong, but it nonetheless ought to have been addressed. In my view it was not.*

5. After the remittal, the Tribunal was reconstituted. The applicant gained the assistance of a solicitor, who made submissions in support of the holding of a second hearing and generally in relation to her claims. His submission included reference to authorities which I applied in *SZEPY v Minister for Immigration & Anor* [2006] FMCA 31, as to the circumstances in which extortion by an insurgency movement may constitute persecution for a reason protected by the Refugees Convention. It is unnecessary for me to explore that area of law, since the present Tribunal's decision assumed that the extortion

and threats suffered by the applicant and her family occurred for a Convention reason.

6. The applicant's solicitor also presented to the Tribunal an affidavit from the applicant's husband, which included the statement:

*That being the father of the Four (4) children I was the one who taking good care of them, send them to school, because my wife is working in Australia, and as such she was the one who give support and send financial assistance to us for our family needs in the Philippines;*

7. In the body of the solicitor's submission, he said:

*In relation to my client's fear of suffering economic persecution, I submit that it is a fear informed by her past experiences of extortion in The Philippines. I am instructed that she was approached on a monthly basis by armed men to pay P1000 which was collected on the last Sunday of the month in the evening, mostly around midnight. Her family also paid these taxes, including her brothers and sisters and they continue to pay them in the review applicant's absence. She was initially told by her father that the men who collected the taxes were from the MILF.*

*I am instructed the review applicant's salary as a teacher amounted to P10,000 per month. The tax therefore represents 10% of her wage. Her assets include two properties (one of which is the family home) and a parcel of land.*

*In Manila the review applicant maintains it would not be an easy thing to find work in that city. Her sister was unable to secure work in Manila and, generally speaking, employment in the major cities often depends upon whom one knows.*

*Extortion is a form of economic persecution that has become deeply entrenched in the Philippines, most particularly in the review applicant's province. I submit that the review applicant has been targeted for extortion because of the perception in the mind of those practising the extortion that she is a Christian with a capacity to pay. Her opposition to the payment of such taxes represents an additional factor that grounds a real chance that she will be otherwise persecuted for failing to pay the extortionists.*

8. At the hearing conducted by the reconstituted Tribunal on 15 May 2007, the applicant is recorded by the Tribunal as giving the further information:

*We discussed the applicant's short time in the UAE and her return to the Philippines. She said that her parents were very angry with her for returning, when she had a job in the UAE. When the RRT had told her earlier that everything was under government control, she had asked her husband if she could go home. It was then that he told her about her niece. I asked her how much she was sending home. She said it was \$A500/month. I asked what she had earned as a high school teacher. She said it was 10,000 pesos/month (about \$A255). However, when I commented that it was no wonder that her family wanted her to stay abroad, she said with some feeling that it was not for the money, but for her safety.*

*I asked her if anything had happened to her between her return to the Philippines in June 2004 and her departure for Australia in November. She said a man had come to her house asking for money.*

*In the course of the hearing, I went over with the applicant various press reports on the situation in Lanao del Norte, the peace agreement between the Government and the militants, including the MILF, the past "tax collecting" activities of the MILF and the attitude of the present leadership to such activities and on the level of politically motivated violence in the province. We also discussed the possibility of her relocating to Manila or another large urban centre. The applicant said that it would be difficult to get a job because of corruption. I said that she was an educated woman, a trained high school maths teacher, and I did not believe that it would be impossible for her to get a job, even if it may take time. I also commented that its being difficult to secure employment did not in itself constitute persecution.*

*I also said to her that her own behaviour did not support her claim to fear persecution. She had sought to return to her old job when she decided to return from the UAE and only came to Australia when that proved impossible. The applicant said that, when her attempt to get her old job back was rejected, she had appealed to a higher authority. That had been successful, but she then declined the offer, to go to Australia.*

9. The reconstituted Tribunal handed down a decision affirming the delegate's decision on 24 May 2007.



10. The applicant now asks the Court again to set aside the Tribunal's decision, and to order it to further consider her refugee claims. I can only make these orders if I am satisfied that the Tribunal's decision was affected by jurisdictional error. I do not have authority to decide whether the applicant's refugee claims should be accepted, nor whether she should be granted a protection visa or any other permission to stay in Australia.
11. The applicant's application and amended application have been prepared without any apparent assistance from a legal representative, but make various points concerning the Tribunal's reasoning.
12. It is convenient for me to address her arguments in a different sequence, and with better legal focus than she has presented them. It is also convenient to address the Tribunal's reasons by extracting all of the brief reasoning given under the heading "*Findings and Reasons*" and by numbering the paragraphs:
  1. *I accept that the applicant is a citizen of the Philippines.*
  2. *I do not believe that the evidence can sustain a claim to a well founded fear of persecution. Neither do the applicant's actions entirely support her claims.*
  3. *As to the facts, she claims to have been threatened for not wanting to pay taxes and that she was taxed particularly severely because she was perceived to be wealthy. However, she has never lived in any other part of the Philippines but her home province and has been there while growing up, securing an education including a university degree and then marrying and giving birth to four children. The MILF has been active in the southern Philippines throughout this period. Yet nothing untoward has happened to any member of her family (except for the neo-natal death of a brother and the disappearance in unexplained circumstances of her niece). If the rest of her family are paying "taxes" to the MILF (and I will proceed without making a finding on this point, since there is no corroboration for the applicant's claims on this matter), it is understandable that they would complain but they have decided - on the applicant's evidence - to live with the situation. She herself clearly did so also for many years. I find, therefore, that the "taxation" of which she complains, if it occurred, fell short of anything*

*that could be called persecution and would do so in the future.*

4. *I am also influenced by her return to the Philippines from the UAE. If, as she claims, she feared for her life, not even home-sickness would have persuaded her to return. Her home-sickness did not prevent her seeking protection in Australia soon after returning to the Philippines. It is now almost 3 years since she last saw her family. I therefore do not accept her explanation for her return to the Philippines. I believe that either the job was not what she expected or she was misled into believing that that the notorious Mr Hoq Mollah could help her obtain residence in Australia, closer to home, or a combination of the two.*
5. *At the same time, she did attempt - according to her evidence at hearing before the Tribunal previously constituted and repeated before me - to recover her old job in her home town. This is not the action of a person fearing for her life or even fearing persecution short of that extremity. Having failed once to recover her job, she tried again at a higher level. She claims that, having succeeded, she declined the offer. I assume that, by then, she had her Australian visa. I am not persuaded that she declined it for fear of her life. Had she been in fear of her life, she would not have applied at all.*
6. *Even a move to Manila would have been preferable, despite the difficulties and possible initial hardships. On that subject, I do not accept that a university graduate and experienced secondary school mathematics teacher would be unable to find work in the Philippines, least of all in Lanao del Norte, the part of the Philippines with one of the lowest literacy and educational levels and general level of development. She would be a valued asset. But I also believe that, despite difficulties, she would be able to obtain work in Manila or in another major urban centre, and could relocate if she was indeed fearful for her safety.*
7. *Accordingly, I do not accept that the applicant was threatened or persecuted in the past for reason of her political opinion, real or imputed, or for her membership of a particular social group or for her religion. Nor do I accept that there is a real chance that she would be so persecuted in the future, physically, economically or in any other way, should she return to the Philippines. I find that relocation within the Philippines is a reasonable option for*

*her should she not wish to return to her home province for any reason.*

8. *Her region is one of political instability and much poverty. On her evidence at hearing, she is able to send to her family from Australia almost double what she was earning as a teacher. I believe that she has set out to provide her family - her children in particular - a better life than she could offer if she were to return. She hinted as much at the conclusion of her hearing before the Tribunal previously constituted and was more explicit on the point to me. It is a position which inspires sympathy and, for what it has cost her, admiration, but it is not the basis for a claim to protection.*
9. *I find that the applicant does not have a well founded fear of persecution in the Philippines for a Convention reason.*
13. The applicant presents a number of arguments challenging the Tribunal's finding at the end of para.3 that:

*the "taxation" of which she complains, if it occurred, fell short of anything that could be called persecution and would do so in the future.*
14. The Minister's counsel submitted that this finding answered the applicant's refugee claims which Dowsett J considered had not been addressed by the previous Tribunal. She submitted that, although the Tribunal did not refer to s.91R(2)(d) of the *Migration Act 1958* (Cth) in this part of its reasoning, and although the language of its finding is not the language of that provision, I should understand the Tribunal's finding to be one which addressed that provision, and sufficiently answered the applicant's claim in relation to economic persecution.
15. Section 91R(1)(b) requires that "persecution", for the purposes of the Refugees Convention definition of "refugee" as adopted by the Migration Act, must be persecution which "*involves serious harm to the person*". "*Serious harm*" is defined in s.91R(2)(d) as including "*significant economic hardship that threatens the person's capacity to subsist*". It also includes "*denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist*".
16. Counsel submitted that the Tribunal found that "*the taxation*", meaning the extortion by the MILF of her family, "*fell short of*

*anything that could be called persecution*” because the Tribunal implicitly found that it did not threaten the “*capacity to subsist*” of the applicant and her family.

17. This submission requires me to give the Tribunal’s reasoning considerable latitude. I accept that I must endeavour to properly understand the Tribunal’s reasoning, notwithstanding infelicity in its expression (see *Minister for Immigration & Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 277 and 291). I also accept that the absence of any expressed application of the tests provided in s.91R does not necessarily itself provide jurisdictional error, unless the absence of discussion allows me in all the circumstances of the Tribunal’s decision to draw an inference that the required tests were not considered by the Tribunal.
18. However, I was attracted by the applicant’s argument that the Tribunal did not take into account and properly consider her claim to suffer economic persecution by way of extortionate demands on herself and her family, being demands of such a nature that she was required to leave home so as to earn a greater amount of income in Australia than she was able to earn in the Philippines. This was a central point in Dowsett J’s judgment.
19. There is no clear discussion by the Tribunal which indicates that it understood that aspect of her claims. There is no reference anywhere in its reasons to Dowsett J’s concerns, and to an awareness that they were required to be addressed in the reconsideration.
20. Moreover, the Tribunal’s reference, in para.8 of the above extract, to the applicant’s evidence that she was able to send to her family from Australia almost double the amount which she was earning as a teacher in the Philippines, suggests that it did not understand that this evidence might provide support for her claim of economic persecution, and not just provide the Tribunal with a reason for categorising her as a mere economic refugee. The Tribunal appears to have regarded the income which she could earn in Australia as irrelevant to her claim to protection, since it said: “*but it is not the basis for a claim for protection*”.

21. In my opinion, these points support a conclusion that the Tribunal failed properly to address the refugee claims which Dowsett J identified, and which should have been given proper consideration by the Tribunal.
22. However, the reasoning of the Tribunal about this is particularly difficult to understand clearly. It appears to believe that its concluding sentence in para.3 was addressing the applicant's claim to have suffered, and to fear future suffering of, economic persecution by the MILF. It is difficult to draw a conclusion of jurisdictional error from the inadequacies of this part of its reasoning, considered alone.
23. I consider that a clearer failure by the Tribunal to understand and apply Dowsett J's judgment emerges later in its reasoning, at the points where it made findings as to the applicant's ability to relocate from the area where her family resided, and in which it was subject to the MILF extortion.
24. The Tribunal's reasoning about the applicant's ability to relocate so as to avoid extortion is found in paras.6 and 7 of the extract above. Its reasoning is particularly terse, and is found in two sentences, being the last sentence of para.6 and the last sentence of para.7. In these, it found:

*But I also believe that, despite difficulties, she would be able to obtain work in Manila or in another major urban centre, and could relocate if she was indeed fearful for her safety.*

and:

*I find that relocation within the Philippines is a reasonable option for her should she not wish to return to her home province for any reason.*
25. It was confirmed in the recent judgment of the High Court in *SZATV v Minister for Immigration & Citizenship* (2007) 237 ALR 634, that protection obligations under the Refugees Convention do not arise if an applicant can avoid or sufficiently mitigate persecution by relocating to a different geographic region of her country of nationality. However, as is pointed out in the reasons of Gummow, Hayne and Crennan JJ, a finding that an applicant can avoid or mitigate persecution by

relocation requires an assessment of what is reasonable. Their Honours said at [24]:

*What is “reasonable”, in the sense of “practicable”, must depend upon the particular circumstances of the applicant for refugee status and the impact upon that person of relocation of the place of residence within the country of nationality.*

26. The requirement to address issues of relocation by reference to practical realities is in accordance with previous authority in the Federal Court, in particular in the well-known passages of *Randhawa v Minister for Immigration, Local Government & Ethnic Affairs* (1994) 52 FCR 437 per Black CJ at 442-443, and Beaumont J at 451.
27. In a more recent decision of the Full Court in *NAIZ v Minister for Immigration & Multicultural & Indigenous Affairs* [2005] FCAFC 37 Branson J, with whom North J agreed, found a failure by the Tribunal in that case properly to understand and apply the requirement to consider practical realities, from the absence of any explicit consideration of issues plainly confronting that refugee claimant in relation to practical relocation in circumstances apparently accepted by the Tribunal (see [21] and [22] of her Honour’s judgment).
28. In the present case, in my opinion, Dowsett J pointed to such a consideration which the applicant’s circumstances, particularly her claim in relation to economic persecution, plainly raised for consideration by a Tribunal before arriving at any finding that the applicant could avoid persecution by relocating within the Philippines. This was, in his Honour’s words:

*One assumes, however, that if she were to relocate to Manilla it would be with her family. It could hardly be reasonable to expect her to do otherwise. In that case her husband would be deprived of the income from his business and would be forced to look for work in Manilla with the difficulties attendant thereon. Further, the suggestion that as the appellant was a person with professional qualifications and demonstrated resourcefulness, she could make her way in Manilla notwithstanding the corrupt and nepotistic environment, seems to overlook the capacity of such factors to cause difficulties even to the qualified and resourceful. In my view the financial considerations incidental to relocation were addressed in a particularly superficial way. Had the Tribunal appreciated the appellant’s concerns about economic*

*persecution, it would have given more attention to the financial implications of relocation.*

29. A proper consideration of the financial implications of the applicant relocating within the Philippines, in my opinion, required consideration of all of the applicant's claimed circumstances of extortion, including the circumstances of her dependent family members, and her claim as to being unable to earn in the Philippines a sufficient income to meet those demands. In particular, the Tribunal was required to consider whether, if she returned to the Philippines, she would be able to continue to provide sufficiently for her family if her family remained in the region where they currently live, including by the payment of the extortionate demands of the MILF. Alternatively, if the Tribunal contemplated that the whole family would relocate with her to Manila, it was required to consider whether it was practicable in a financial sense for a family of five to do that in the circumstances of the applicant's family.
30. There is no discussion by the Tribunal of these aspects of a hypothesis that the applicant could avoid the persecution of herself and her family, or sufficiently comply with the extortionate demands in one region of the Philippines, by relocating elsewhere in the Philippines. In circumstances where these matters had been clearly raised by Dowsett J, I consider the absence of discussion indicates that the Tribunal overlooked his Honour's discussion, and overlooked necessary considerations which his Honour had pointed to. I conclude that the present Tribunal did not consider the practical realities of its suggestion that the applicant could obtain work and live in Manila, when it made its findings to this effect at the end of paras.6 and 7.
31. Counsel for the Minister submitted in favour of a finding that the Tribunal had properly addressed the issues concerning relocation, that this should be inferred from the Tribunal's opening sentence at para.6 above, where it referred to "*despite the difficulties and possible initial hardships*", and also from its reference to "*despite difficulties*" in the last sentence of that paragraph. However, in the context of that paragraph, I would understand the Tribunal only to be addressing the applicant's personal problems of obtaining a job. I cannot read this paragraph as giving any consideration to her family circumstances which would attend such an effort. I therefore am not satisfied that the

Tribunal's vague references to "*difficulties*" reveals a proper consideration of relevant considerations.

32. Counsel also submitted that the Tribunal did not need to give discussion of these matters because the applicant had not herself presented them to the Tribunal as a concern. Counsel referred to the submission of the applicant's solicitor, which I have extracted above, and to the applicant's statements as summarised by the Tribunal at the hearing, which I have extracted above, which pointed to her difficulties in getting a job in Manila as the chief problem facing a suggested relocation. However, I do not read those parts of the applicant's evidence and submissions as being in any way inconsistent with, or as withdrawing, the obvious consideration of the applicant's family circumstances to which Dowsett J referred. Nor do I consider that the Tribunal thought that the applicant had disclaimed her family considerations relevant to considering a hypothesised relocation of the applicant to Manila.
33. I find support for my conclusion that the Tribunal failed properly to address relocation considerations, because, as I have explained when discussing the Tribunal's finding at the end of its para.3, I have been left in doubt whether the Tribunal properly understood the implications for the applicant's economic persecution claims of her ability to provide to her family from Australia almost double the amount she was earning as a teacher in the Philippines. In this context, it appears to me probable that the Tribunal thought that it was enough to find that the applicant could obtain work in Manila, as a complete answer to her claimed fear of economic persecution. However, this was a legally inadequate consideration of the refugee claims which were before the Tribunal.
34. In my opinion, the Tribunal's conclusion that "*relocation within the Philippines is a reasonable option for her should she not wish to return to her home province for any reason*" was attended by a failure of the Tribunal properly to consider the circumstances, which it accepted, were facing the applicant in her efforts to support her family, so that they could sufficiently meet extortion demands in the place where her family currently lived in the Philippines.



35. The Tribunal's relocation findings were, in my opinion, an essential part of the Tribunal's reasoning which purported to answer the applicant's refugee claims, rather than a separate and alternative basis upon which it presented its decision to affirm the delegate's decision. I am certainly not persuaded that the Tribunal's reasoning can otherwise be supported (cf. *SZBYR v Minister for Immigration & Citizenship* [2007] HCA 26 at 29).
36. I have therefore concluded that the matter must again be sent back to the Tribunal to properly address the issues identified by Dowsett J.
37. I note that the applicant also presented arguments directed at the Tribunal's finding that the applicant had been "misled" by "the notorious Mr Hoq Mollah". These arguments raised issues whether there was a failure of procedural fairness by the Tribunal of the type found by the High Court in *SZBEL v Minister for Immigration & Multicultural & Indigenous Affairs* (2006) 228 CLR 152, whether the finding was based on information which should have been put to the applicant under s.424A(1) of the Migration Act, and whether there was any evidence before the Tribunal on which the finding could be supported. I have not found it necessary to address these issues.

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**I certify that the preceding thirty-seven (37) paragraphs are a true copy of the reasons for judgment of Smith FM**

Associate:

Date: 11 March 2008