

**NOTE: HIGH COURT ORDER PROHIBITING PUBLICATION OF NAME
OF APPELLANT OR IDENTIFYING PARTICULARS REMAINS IN FORCE**

IN THE SUPREME COURT OF NEW ZEALAND

**SC 106/2009
[2010] NZSC 33**

BETWEEN M A
 Applicant

AND THE ATTORNEY-GENERAL
 First Respondent

AND A REFUGEE STATUS OFFICER
 Second Respondent

Court: Elias CJ, Blanchard and McGrath JJ

Counsel: R J Hooker for Applicant
 I C Carter for First and Second Respondents

Judgment: 31 March 2010

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] On arrival in New Zealand in 1996 the applicant claimed refugee status and gave an account of his circumstances to a refugee status officer. The officer decided that he was a refugee, as defined in art 1A(2) of the 1967 Protocol to the Convention Relating to the Status of Refugees (1951), and accepted the claim.

[2] The present application raises issues concerning the use of documents by a refugee status officer who is considering whether to cancel the recognition of the applicant's status. The documents were found during a search by the police of the applicant's home in 2000. They are inconsistent with the account of his background he gave to the officer in 1996 to support his claim for refugee status. The applicant

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seeks leave to appeal against a judgment of the Court of Appeal¹ which held that the documents could properly be used by a refugee status officer in deciding to withdraw recognition of the applicant's status.

[3] There are three proposed grounds advanced in seeking leave to appeal to this Court. The first concerns the validity of the warrant issued to the police to search the appellant's premises in 2000. There was, however, no challenge to the validity of the warrant in the High Court during cross-examination by the applicant's counsel of the police officer who gave evidence of the search. The Court of Appeal, for that reason, rejected this ground. Having regard to that procedural history, we are satisfied that there is no adequate basis in the interests of justice for this Court to hear an appeal on that ground.

[4] The second ground concerns whether certain seized documents, which had been prepared by the applicant's refugee status adviser who was not a lawyer for the purposes of his claim to refugee status, were protected by legal privilege. We do not consider that proposition is arguable. It may be that protection is sometimes available for material of this kind under the general protection for confidentiality in s 69 of the Evidence Act 2006 but the circumstances of the present case do not provide a sound basis for consideration of that question by this Court.

[5] The third proposed ground concerns what is said to be unlawful document sharing by the police, who passed documents obtained during the search to the Immigration Service. They did so because the documents cast doubt on the correctness of factual information on which the 1996 decision to grant refugee status was based. We are accordingly satisfied the police were acting properly in the circumstances and that this ground also is not arguable.

[6] For these reasons the application for leave to appeal is dismissed.

Solicitors:
Vallant Hooker and Partners, Auckland for Applicant
Crown Law Office, Wellington for First and Second Respondents

¹ *MA v The Attorney-General* [2009] NZCA 490.