

**FEDERAL COURT OF AUSTRALIA**

**SZLPO v Minister for Immigration & Citizenship (No 2) [2009] FCAFC 60**

**SZLPO v MINISTER FOR IMMIGRATION AND CITIZENSHIP  
and REFUGEE REVIEW TRIBUNAL**

**NSD 1227 of 2008**

**LINDGREN, STONE AND BENNETT JJ  
22 MAY 2009  
SYDNEY**

**IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY**

**NSD 1227 of 2008**

**BETWEEN:               SZLPO  
                                  Applicant**

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

**REFUGEE REVIEW TRIBUNAL  
Second Respondent**

**JUDGES:                LINDGREN, STONE AND BENNETT JJ**

**DATE OF ORDER:     22 MAY 2009**

**WHERE MADE:         SYDNEY**

**THE COURT ORDERS THAT:**

1.     The decision of the Refugee Review Tribunal (Tribunal) handed down on 11 October 2007 be set aside.
2.     The matter be remitted to the Tribunal to be determined in accordance with law.
3.     The first respondent pay the applicant's costs.

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 eSearch on the Court's website.

**IN THE FEDERAL COURT OF AUSTRALIA  
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Applicant**

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

**REFUGEE REVIEW TRIBUNAL  
Second Respondent**

**JUDGES: LINDGREN, STONE AND BENNETT JJ**

**DATE: 22 MAY 2009**

**PLACE: SYDNEY**

**REASONS FOR JUDGMENT (No 2)**

**INTRODUCTION**

1 On 1 May 2009 the Court made orders and published reasons for judgment in three proceedings, of which the present proceeding was one: see *SZLPO v Minister for Immigration & Citizenship* [2009] FCAFC 51 (Earlier Reasons).

2 At [35] of the Earlier Reasons we noted that there were two grounds stated in SZLPO's second amended application for judicial review of the Tribunal (we are using the abbreviations that we used in the Earlier Reasons). We summarised those two grounds in that paragraph, the second ground being summarised as follows:

the Tribunal failed to comply with s 424A(1) of the Act [*Migration Act 1958* (Cth)] by failing to give SZLPO adequate particulars of the information provided to the Tribunal by DFAT [Department of Foreign Affairs and Trade] on 2 August 2007, advising that the letter of introduction was false and was not signed by the President of Ahmadiyya Muslim Jamaat, and that SZLPO was not a member of Ahmadiyya Muslim Jamaat.

We added that the second ground was, therefore, that the letter dated 2 August 2007 written by the Tribunal to SZLPO's representative (the 424A letter) did not satisfy the requirements of s 424A of the *Migration Act 1958* (Cth) (the Act).

3           Unfortunately, the Court overlooked this ground when publishing the Earlier Reasons.

4           On 12 May 2009 the solicitor for the first respondent (the Minister) wrote to the Associate of the presiding Judge drawing attention to the omission. By reason of her doing so, her client, through her, acted as a model litigant. The Court records its gratitude for her assistance.

5           On 13 May 2009 the Court made an order setting aside the orders that had been made in this proceeding on 1 May 2009. The orders made on that date in the other two proceedings remained unaffected.

6           The parties have indicated their agreement to the Court's deciding the second ground of review on the basis of the existing written and oral submissions of the parties.

7           The Earlier Reasons remain unaffected. The present supplementary reasons for judgment take the earlier ones as read.

## LEGISLATION AND FACTS

8           At [19] of the Earlier Reasons we set out s 424A of the Act. At [23]-[35] we set out the facts and issues relating to SZLPO's application. At [25] of the Earlier Reasons we noted that following the hearing on 12 July 2007 the Tribunal emailed a request to DFAT. At [26] we noted that under the heading "Questions", the Tribunal's email stated:

6.       The RRT would be grateful for a response to the following question(s) **(if possible, please also detail the nature of the sources consulted in forming this response)**.

A. Please contact the office of the National Ameer of the Ahmadiyya Muslim Jamaat of Bangladesh to verify the authenticity of the applicant's letter and his claim to be a member of the Ahmadi community. [our emphasis]

9           As recorded at [27] of the Earlier Reasons, later on the same day, 12 July 2007, DFAT in Canberra forwarded a copy of the Tribunal's request to its Post in Dhaka.

10 As recorded at [29] of our Earlier Reasons, on 1 August 2007 the DFAT Post in Dhaka reported to DFAT in Canberra on the response received from the office of the National Ameer. It is convenient to repeat here that report as follows:

Post contacted the office of the National Ameer of the Ahmadiyya Muslim Jamaat of Bangladesh in Dhaka. We received the following response on 31 July 2007 from the office in writing:

Text Begins

On receipt of your query on the captioned subject, we have investigated the case and came to the conclusion as under:

- A. The letter of introduction submitted **is false** and **not signed** by Mr. Asaduzzaman Bhuiyan, President, Ahmadiyya Muslim Jama'at, Krora.
- B. The applicant is **not a member** of Ahmadiyya Muslim Jama'at.

**Sources**

- 1. Direct consultation with Mr. Asaduzzaman Bhuiyan, President, AMJ, Krora, who confirmed that he did not sign such letter and he never had such "Letter Pad".
- 2. Investigation from the nearby Jama'at of the applicant's birth place Sreemangal, Moulvibazar.
- 3. Our records.  
[Emphasis in original]

11 DFAT in Canberra forwarded a copy of the Dhaka Post's report to the Tribunal, which then wrote the 424A letter on 2 August 2007. The 424A letter set out verbatim the report down to but not including the heading "Sources" or the material that follows that heading.

12 SZLPO's second ground is that because of the omission of particulars of the sources of the information, the 424A letter did not satisfy the requirements of s 424A.

13 It will be noted that the "Sources" were set out in a letter from the Office of the National Ameer of the Ahmadiyya Muslim Jama'at of Bangladesh in Dhaka. The letter was informing the DFAT Post in Dhaka that the Office's sources were:

- 1. Direct consultations by the Office with Mr Asaduzzaman Bhuiyan, President, Ahmadiyya Muslim Jama'at, Krora, the purported signatory of the letter of introduction;
- 2. Inquiries made by the Office of the nearby Jama'at of SZLPO's birth place, Sreemangal, Moulvibazar; and
- 3. The records of the Office itself.

## **PARTIES' SUBMISSIONS**

14 Counsel for SZLPO states that SZLPO relies on “the construction” of s 424A “advanced” in *SAAP v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 228 CLR 294; *SZBYR v Minister for Immigration and Citizenship* (2007) 235 ALR 609 and *SZKLG v Minister for Immigration and Citizenship* (2007) 164 FCR 578. Unfortunately, counsel does not identify the particular construction on which he relies.

15 Counsel for SZLPO identifies the particulars of information that he contends should have been given to SZLPO, namely;

- (a) the fact that SZLPO’s claims were repudiated directly by Mr Bhuiyan, the leader of the Krora Jama’at (rather than just by the Office of the National Ameer); and
- (b) the fact that investigations conducted at “the nearby Jama’at of SZLPO’s birth place Sreemangal, Moulvibazar, “revealed no record of [SZLPO] or [revealed] a record adverse to him”.

In summary, SZLPO contends that s 424A obliged the Tribunal to give him particulars of the sources that the Office of the National Ameer had consulted.

16 SZLPO submits at the outset that the Tribunal was obliged to “have regard” to those two pieces of information because it had obtained them through the exercise of the power conferred by s 424(1). Separately, SZLPO submits that the Tribunal’s reasons for decision make it clear that the two pieces of information were part of the Tribunal’s reason for affirming the delegate’s decision.

17 SZLPO correctly points out that the nature of the Ahmadi community as a “close knit” and “tightly organised” community or group formed a significant part of the Tribunal’s reasoning. The first two substantive paragraphs of the “Findings and Reasons” section of the Tribunal’s reasons for decision were as follows:

The independent information indicates that the Ahmadi community is a close knit and tightly organised group in each country in which it is located. Members of the community are expected to attend their mosque and to become members of the various auxiliary associations of the Ahmadi community. The independent information indicates that members of the community and their families are well known to each other. Children are given explicit education in Ahmadi practice and

belief. Persons who convert to Ahmadism are required to study Ahmadi beliefs and undergo specific rituals which are then recorded in a particular manner before being accepted into the community.

I find that DFAT forwarded the letter of introduction dated [15 April 2005] to the National Ameer of the Ahmadiyya Muslim Jamaat of Bangladesh. I find that the Ameer of the Bangladeshi community responded on 2 August 2007 advising that the letter of introduction submitted was false and was not signed by Mr Asaduzzaman Bhuiyan and that the applicant was not a member of the Ahmadiyya Muslim Jama'at. On the basis of this, I find that the letter was fraudulent.

18 The Minister submits that SZLPO's first submission does not advance his case because the Tribunal is not required to give a notice under s 424A in respect of all information to which it has regard.

19 The Minister submits that SZLPO must have had a clear expectation that the Office of the National Ameer would need to check with the relevant local organisation given that, as SZLPO himself had suggested, there are 100,000 Ahmadis in Bangladesh. The Minister submits that SZLPO could only have anticipated that his current status as a member of the Ahmadi community would be verified by the Office of the National Ameer with persons who might know, namely, persons in his local area.

20 Similarly, according to the Minister's submission, it would have been obvious to SZLPO that the Office of the National Ameer would contact Mr Bhuiyan, the putative author of the letter of introduction. The Minister points out that, in his response to the 424A letter, SZLPO proffered an explanation about two opposing groups seeking control within his local area and about Mr Bhuiyan having an enmity towards him.

## **CONSIDERATION**

21 Has SZLPO established that, as at the date of the 424A letter, 2 August 2007, the information as to the sources consulted by the Office of the National Ameer constituted information that the Tribunal then considered would be the reason or part of the reason, for affirming the delegate's decision? There is no direct evidence of what the Tribunal considered at that time. It is a matter for inference.

22 The Minister accepts that the Tribunal got the information as to sources in exercise of the s 424(1) power and was obliged by that subsection to have regard to it. We agree with the

Minister, however, that the fact that the Tribunal obtains information in exercise of the s 424(1) power does not require a conclusion that the Tribunal then considers that that information would be the reason, or part of the reason, for affirming the decision under review. The information received might prove to be irrelevant or the Tribunal might think that it does not deserve to be accorded any weight. It is not amiss, however, to note that when seeking the information as to sources, the Tribunal must have considered that information relevant (see s 424(1)) and that in the circumstances of the present case there is no reason to think that it changed its mind.

23           At [25] of our earlier reasons we set out the terms of the Tribunal’s request to DFAT dated 12 July 2007. According to the emailed request, DFAT was to contact “the Office of the National Ameer of the Ahmadiyya Muslim Jama’at of Bangladesh” and SZLPO had given permission for that contact to be made. According to the request, SZLPO had given certain particulars for submission to the Office of the National Ameer in Bangladesh. The particulars were of a kind directed to enabling identification of SZLPO, including the fact that he was “raised in Boulachara, Sreemongole, Upazila”.

24           When the Tribunal requested of DFAT, “if possible, please also detail the nature of the source consulted in forming this response”, the Tribunal was making it clear that it understood that the Office of the National Ameer would have to consult sources. Apparently the Tribunal wished to ensure that the answer to be given as to the authenticity of the letter of introduction and of SZLPO’s claim to be a member of the Ahmadi community was reliable.

25           When the 424A letter informed SZLPO that the Office of the National Ameer had concluded that the letter of introduction was false and not signed by Mr Bhuiyan, for all that SZLPO knew staff within the Office of the National Ameer may have come to that conclusion by the comparison of the signature on the letter of introduction with other signatures known to be those of Mr Bhuiyan or they may have come to that conclusion by making enquiries of persons other than Mr Bhuiyan himself.

26           Similarly, the Office’s statement that SZLPO was “not a member of Ahmadiyya Muslim Jama’at” may have been derived from discussions within the Office or from people in Dhaka rather than from sources at the Jama’at at Sreemangal, Moulvibazar.

27           While the Tribunal's reason for decision do not refer to the sources of the information provided by the Office of the National Ameer, in the "Claims and Evidence" section of its reasons for decision the Tribunal set out the course of the correspondence, and found that the letter of introduction was fraudulent. It did so on the basis of the response of the Office of the National Ameer of 2 August 2007 to the effect that the letter of introduction was false and was not signed by Mr Bhuiyan and that SZLPO was not a member of Ahmadiyya Muslim Jama'at. Although the Tribunal did not say so, it must have been reinforced in its finding in relation to the letter of introduction by the fact that the Office of the National Ameer had consulted Mr Bhuiyan himself, who confirmed that he did not sign the letter and said that he had never had a "letter pad" of the kind in question, and had also consulted the Jama'at near to SZLPO's birth place, Sreemangal, Moulvibazar.

28           The Tribunal emphasised the close knit and organised nature of the Ahmadiyya community and concluded that SZLPO was not actually an Ahmadi and was not perceived to be one.

29           The 424A letter told SZLPO the conclusions that the Office of the National Ameer had reached as to the authenticity of the letter of introduction and as to SZLPO's claimed membership of the Ahmadiyya Muslim Jama'at but not the basis for its conclusions.

30           It is not clear from SZLPO's response of 16 August 2007 to the 424A letter that he appreciated that Mr Bhuiyan had said that he had not signed the letter of introduction or that inquiries had been made locally of the Jama'at at Sreemangal, Moulvibazar in relation to SZLPO's membership. SZLPO's response could well have been different had he known the source of the information.

31           In our respectful opinion, it is to be inferred from the terms of the Tribunal's request of DFAT and the terms of the Tribunal's reasons for decision to which we have referred that following receipt of the information from DFAT on 1 or 2 August 2007, the Tribunal thought that the nature of the sources that had been consulted by the Office of the National Ameer would itself be part of the reason for affirming the decision under review.

32           Section 424A therefore obliged the Tribunal to give SZLPO particulars of the sources consulted.

## CONCLUSION

33 Because the Tribunal did not comply with s 424A, there was jurisdictional error on its part and the Tribunal's decision should be set aside and the matter remitted to it for consideration and determination according to law. The Minister should pay SZLPO's costs.

I certify that the preceding thirty-three (33) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justices Lindgren, Stone and Bennett JJ.

Associate:

Dated: 22 May 2009

Counsel for the Applicant: Mr C Mantziaris

Solicitor for the Applicant: Chang, Pistilli & Simmons

Counsel for the Respondents: Mr A Robertson SC and Mr S Lloyd SC

Solicitor for the Respondents: Australian Government Solicitor

Date of Hearing: 3 November 2008

Date of Judgment: 22 May 2009