FEDERAL COURT OF AUSTRALIA

SZNPS v Minister for Immigration and Citizenship [2010] FCA 101

Citation:	SZNPS v Minister for Immigration and Citizenship [2010] FCA 101
Appeal from:	SZNPS v Minister for Immigration & Anor [2009] FMCA 1102
Parties:	**SZNPS v MINISTER FOR IMMIGRATION AND CITIZENSHIP and REFUGEE REVIEW TRIBUNAL**
File number:	NSD 1408 of 2009
Judge:	**LOGAN J**
Date of judgment:	15 February 2010
Legislation:	*Migration Act 1958* (Cth) ss 424A, 425
Cases cited:	*SZBYR v Minister for Immigration and Citizenship* (2007) 81 ALJR 1190 followed *Minister for Immigration and Citizenship v SZIAI* (2009) 83 ALJR 1123 followed
Date of hearing:	15 February 2010
Place:	Sydney
Division:	GENERAL DIVISION
Category:	No Catchwords
Number of paragraphs:	22
Counsel for the Appellant:	The Appellant appeared in person
Solicitor for the Respondents:	DLA Phillips Fox

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
GENERAL DIVISION **NSD 1408 of 2009**

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

BETWEEN: **SZNPS**
Appellant

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

REFUGEE REVIEW TRIBUNAL
Second Respondent

JUDGE: **LOGAN J**
DATE OF ORDER: **15 FEBRUARY 2010**
WHERE MADE: **SYDNEY**

THE COURT ORDERS THAT:

1. The Appeal is dismissed.

2. The Appellant pay the First Respondent's costs of and incidental to the appeal to be taxed.

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
NEW SOUTH WALES DISTRICT REGISTRY
GENERAL DIVISION **NSD 1408 of 2009**

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

BETWEEN: **SZNPS**
Appellant

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

REFUGEE REVIEW TRIBUNAL
Second Respondent

JUDGE: **LOGAN J**
DATE: **15 FEBRUARY 2010**
PLACE: **SYDNEY**

REASONS FOR JUDGMENT

1 The Appellant is a citizen of the People's Republic of Bangladesh. He came to Australia on 9 September 2008. The following month, on 8 October 2008, he lodged an application under the *Migration Act 1958* (Cth) (Migration Act) for what is known as a protection visa with the Department of Immigration and Citizenship. On 23 December 2008, a delegate of the Minister for Immigration and Citizenship (the Minister) refused that protection visa application. The Minister is the First Respondent to, and the only active party in, this appeal. In January 2009, the Appellant sought the review by the Refugee Review Tribunal (the Tribunal) of the refusal decision made by the Minister's delegate. On 22 April 2009, the Tribunal decided to affirm that refusal decision. The Tribunal's reasons, and its formal decision, were sent out to the Appellant by the Tribunal under cover of a letter also dated 22 April 2009.

2 From that decision, as was his right, the Appellant applied to the Federal Magistrates Court for an order of review. On 18 November 2009, for reasons published that day, the Federal Magistrates Court dismissed the Appellant's judicial review application. It is from that decision that the Appellant appeals to this Court.

3 The grounds of appeal exactly replicate those which were put before the Federal Magistrates Court in the amended application as grounds of alleged administrative law error. In this sense, the grounds of appeal do not engage with, as they should, the decision and reasons of the Federal Magistrates Court. It is important to recall that the nature of the proceeding in the Federal Court is an appeal. It is appellate, not original jurisdiction, that the Appellant has sought to engage.

4 The task of judicially reviewing a decision of the Refugee Review Tribunal for administrative law error is consigned by the Migration Act to the Federal Magistrates Court. The role of this Court in cases such as the present is to determine whether, having regard to grounds of appeal that are directed to the decision of the Federal Magistrates Court, that court was in one or other of the ways identified in those grounds wrong in law. Thus, one way of disposing of this appeal would be to take the view that it failed comprehensively to engage the jurisdiction consigned to the Federal Court. That is not the approach that the Minister took in addressing the challenge made by the Appellant. Rather, the Minister treated the notice of appeal as if it were a challenge on the basis that the Federal Magistrates Court ought, on one or the other of the identified grounds, have found error in the tribunal's decision.

5 In the course of oral submissions, I elicited from the Appellant that this indeed was what he wished to be done on the appeal. The approach of the Minister was a fair and, in the circumstances, humane way of dealing with the challenge before this Court. I intend to follow this approach. One consequence of so doing, though, is if I find myself in agreement with the way in which the learned federal magistrate dealt with the grounds of review in the amended application, I might content myself with expressing agreement with the decision of the federal magistrate for the reasons that he gave.

6 I am indeed in general agreement with the approach of the federal magistrate to the grounds of the review before the Federal Magistrates Court. To deal with the appeal just on that basis would not, though, I think, do justice to the eloquent and persuasive way in which the appellant made his submissions both orally and in writing.

7 The essence of the Appellant's challenge was that he was left with the strong feeling that nothing he could say or do before the Tribunal would change the Tribunal's mind about

the authenticity of documents which he submitted or the veracity of his claim for a protection visa. That was expressed by him in the form of an allegation in ground 1 of bad faith and in ground 2 in the form of an allegation which, whilst termed an excess of jurisdiction, had at its heart an allegation of a failure on the part of the Tribunal to make any or at least any adequate investigation of particular corroborative documents which he lodged in support of his review application. The other ground, ground 3, advanced before the federal magistrate concerned an alleged breach of s 424A of the Migration Act or at least a failure to accord procedural fairness.

8 It is convenient to deal first with the alleged breach of s 424A of the Migration Act. In that regard, the Appellant considered that he ought to have been given notice, as that section required, and then an opportunity to make a further submission to the Tribunal. It is apparent from the Tribunal's reasons for decision, which are comprehensive, that in reaching its views about the authenticity of documents such as a medical certificate and police and court documents, it acted upon information that the appellant gave for the purpose of his application for review as well as what one might term generic information unrelated to the Appellant specifically. That generic information in particular was information about the prevalence of forged documents from Bangladesh.

9 The Tribunal then drew upon that generic information as well as responses given by the Appellant in the course of his oral evidence before it and the contents of the submitted documents themselves to reach conclusions about authenticity. The Tribunal's thought processes leading to conclusions about authenticity of documents and, for that matter, whether ultimately it was satisfied that the appellant was a person to whom Australia owed protection obligations did not amount to "information" for the purposes of s 424A of the Migration Act, *SZBYR v Minister for Immigration and Citizenship* (2007) 81 ALJR 1190.

10 Further, generic information and information given by an applicant for the purpose of an application for review each fall within the exception to the application of the obligation for which s 424A(1) provides, see s 424A(3)(a) and (b) respectively. There is, therefore, no substance in the challenge insofar as it relates to an alleged breach of s 424A of the Migration Act.

11 More generally, it is apparent from the appeal book that the Tribunal, when requested, did afford the Appellant an opportunity to appear before it. Thus, in this regard, the procedural fairness obligation imposed by s 425 of the Migration Act was observed. The learned federal magistrate concluded as much, in relation both to s 424A and s 425. His Honour was right so to do.

12 The approach of the Tribunal, to which I have referred, leads logically to a consideration of the second of the appeal grounds which was an alleged failure on the part of the Tribunal to carry out its own inquiries. The Tribunal was not obliged to do this either generally or in the particular circumstances of this case. The nature of the function consigned to the Tribunal was recently considered by the High Court, in *Minister for Immigration and Citizenship v SZIAI* (2009) 83 ALJR 1123. The essence of the High Court's consideration of the role of the Tribunal was that whilst the Tribunal was entitled to conduct its own inquiries, its primary function was that of reviewing the decision of the Minister, or the Minister's delegate. Thus, whilst the Tribunal did have an inquisitorial quality it was essentially a review forum.

13 There are cases where, against singular circumstances, an obligation nonetheless, on the part of the Tribunal, to conduct an inquiry might arise. This is not one. Rather, it was incumbent upon the Appellant to support his case with such material as he could, both in written as well as oral form. This he did. The Tribunal was not obliged to accept, at face value, either his oral evidence, documents submitted or the contents of the claim, as originally made. Thus, insofar as ground 2 seeks to impeach the Tribunal's decision and, for that matter, then resultantly the Federal Magistrate's dealing with this aspect of the case, ground 2 must fail.

14 Some aspects of ground 2, insofar as they involve a challenge to the way in which the Tribunal went about its task of assessing the authenticity of documents submitted, overlap with ground 1.

15 Ground 1 was expressed in terms of an allegation of bad faith on the part of the Tribunal. As developed in oral submissions, that ground might better be characterised as an allegation of bias, either actual or apprehended, on the part of the Tribunal. There is

certainly, in theory, a possibility that, on particular facts, grounds of bias might overlap with bad faith.

16 Bad faith is a serious allegation to make in respect of any administrative decision maker. It requires particular persuasive proof. Of course that proof might arise by way of necessary inference from the way in which the Tribunal conducted a hearing and expressed its reasons. There is no such evidence in this case. Nor is there evidence which would give rise to a finding of actual, or even apprehended, bias.

17 As a matter of fairness I have also reflected upon whether the way in which the Tribunal approached the authenticity question, in respect of documents submitted, might be regarded as unreasonable in the administrative law conception of that term.

18 I was particularly troubled by a reference, by the Tribunal, in para 204 of its reasons, to what one might, or might not, expect a doctor employed in a Bangladesh hospital to put in a medical certificate. It seemed to me that the Tribunal was assimilating its own views about Australian medical practice in hospitals of which, I observe, it had no evidence; with practice in hospitals in Bangladesh of which, I also observe, it had no evidence. Viewed alone, that type of reasoning might be regarded as illogical, in the sense of making an assumption about assimilation without any reasonable evidentiary foundation. However, that is not the only basis upon which the Tribunal came to discount the medical certificate.

19 The Tribunal noted, as is fairly open on a reading of the document, the contrast between the detail in respect of the bed to which the Appellant was allocated and the vague generality of the injuries described in the certificate. The Tribunal also commented upon the inconsistencies in evidence, given by the Appellant, as to why the certificate, which was said to be an original, came to be written in English. There were, then, reasonable bases, quite apart from the – with respect – idiosyncratic reasoning, in relation to hospital certificate practice, upon which one might fail to be persuaded that the medical certificate was original. The Tribunal's reasoning, in respect of the police and court documents, seems to me reasoning that is logical and reasonably open.

20 It bears repeating that it was for the Appellant to advance his case with such material as he could before the Tribunal. It was incumbent upon him to supply answers to any

deficiencies that persuaded the Tribunal. I did not read the Tribunal's reasons as the reasons of a Tribunal which had closed its mind, as opposed to a Tribunal which was, as it was entitled to be, inquisitive and seeking to be satisfied. There is always a risk where a Tribunal is given generic information about the prevalence of forgery from a particular country for that Tribunal to be cynical to the point of disbelief in respect of particular cases. Nonetheless, the reasons do not, to me, disclose a Tribunal which has been so polluted by such generic information as to have closed its mind.

21 I do not have before me a transcript of the proceedings before the Tribunal. However, the account of the course of the proceedings and the reasons is very detailed. The authenticity of that account in itself was not challenged. Having regard to that, it seems to me that the Tribunal gave to the Appellant a fair opportunity to prepare its case. It is just that the Tribunal, when all is said and done, was not satisfied by what the Appellant put forward.

22 For these reasons, then, there is no merit in the grounds of appeal. The appeal must be dismissed.

I certify that the preceding twenty-two (22) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Logan.

Associate:

Dated: 19 February 2010