# FEDERAL MAGISTRATES COURT OF AUSTRALIA

*SZMGR v MINISTER FOR IMMIGRATION & ANOR* *[2009] FMCA 174*

MIGRATION – RRT decision – applicant fearing persecution from Muslim extremists – Tribunal confined 'serious harm' to death or actual physical harm – other harassment not considered – material jurisdictional error found – matter remitted.

*Migration Act 1958* (Cth), ss.36, 91R

*Appellant S395/2002 v Minister for Immigration & Multicultural Affairs* (2004) 216 CLR 473
*Minister for Immigration & Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1
*Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323
*NBFP v Minister for Immigration & Multicultural & Indigenous Affairs* [2005] FCAFC 95
*NBLC v Minister for Immigration & Multicultural & Indigenous Affairs* (2005) 149 FCR 151
*SZDAG v Minister for Immigration* [2006] FMCA 987
*VBAO v Minister for Immigration & Multicultural & Indigenous Affairs* (2006) 233 CLR 1
*VTAO v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCA 927

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| Applicant: | SZMGR |
| First Respondent: | MINISTER FOR IMMIGRATION & CITIZENSHIP |
| Second Respondent: | REFUGEE REVIEW TRIBUNAL |
| File Number: | SYG 1246 of 2008 |
| Judgment of: | Smith FM |
| Hearing date: | 26 February 2009 |

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| Delivered at: | Sydney |
| Delivered on: | 20 March 2009 |

**REPRESENTATION**

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| Counsel for the Applicant: | Mr J Smith |
| Counsel for the First Respondent: | Ms L Clegg |
| Solicitors for the Respondents: | Sparke Helmore |

**ORDERS**

(1) A writ of certiorari issue directed to the second respondent, quashing the decision of the second respondent handed down on 17 April 2008 in matter 071940283.

(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 dated 12 November 2007.

(3) The reasons for judgment in this proceeding are not to be published in any manner before 10 April 2009, except to the parties and their legal or other advisers and to the members and staff of this Court or of a Court on appeal.

(4) Grant liberty to the parties to apply to vacate, extend or vary order 3.

# FEDERAL MAGISTRATES COURT OF AUSTRALIA AT SYDNEY

## SYG 1246 of 2008

**SZMGR**
Applicant

And

**MINISTER FOR IMMIGRATION & CITIZENSHIP**
First Respondent

**REFUGEE REVIEW TRIBUNAL**
Second Respondent

## REASONS FOR JUDGMENT

1. The applicant applies to set aside a decision of the Refugee Review Tribunal, which affirmed a delegate's decision to refuse to grant a protection visa to the applicant. Although the delegate and the Tribunal accepted the veracity of the applicant's claimed history of harassment by Muslim extremists, they considered that Australia's protection obligations were excluded by s.36(3) of the *Migration Act 1958* (Cth). This applies to a person who has *"a right to enter and reside in, whether temporarily or permanently"* in *"any country apart from Australia"* including their country of nationality. However, under s.36(4), the exclusion does not apply to a country *"if the non-citizen has a well-founded fear of being persecuted in [the] country for reasons of race, religion, nationality, membership of a particular social group or political opinion"*. The issue which I must now decide, is whether the Tribunal made a jurisdictional error when it decided that the applicant did not have such a fear.

2. The applicant is a Jordanian national with a Palestinian Muslim background, who has a temporary right of entry and residence in a European country, which I shall call Britonia. He gained prominence in Britonia, at least among its migrant communities, as a leader and media spokesperson of a social welfare organisation which promoted tolerance and human rights. He gave honest immigration assistance to Gulf War asylum seekers and others. He also became known among the Arab community as a person who *'believe in a God and not any religion'*.

3. Notwithstanding his known apostasy from Islam, the applicant was approached by a *'very fundamentalist and extreme Sheik with an extreme hatred of the West'* who had connections to a terrorist organisation, and by his supporters, and was asked to give them immigration assistance. The applicant refused, and assisted the security and immigration authorities of Britonia to deport and exclude the Sheik and his followers. He did so in the face of threats and religious abuse, and his assistance to the authorities became known. One of the Sheik's followers told him that *"it was his duty to Islam to deal with me and he will then get his rewards in heaven"*.

4. The applicant's visa statement concluded:

> *I was being threatened with death and I know these people and organisations will and can do this but what made me continue was that I knew they needed me at that time. It was not their benefit to dispose of me and with their Islamic mind they were certain that I would revert to my Islamic belief and assist them. I was in a position and with contacts too good for them to harm me at the time.*
>
> *Although [Britonia] is a democratic and free and democratic country I was unable to get the protection I needed as the [Britonian] authorities were unable especially due to the fact that I was very well known through the media.*
>
> *I received death threats by sms messages and was followed by many people. When I felt that the threats were becoming serious I was forced to hide at the home of a friend outside (his city) for some time. I made an application to Australia but was refused. I then had no choice but to return to Jordan. I did not want to do this because my family and other people knew that I had abandoned Islam and this was going to bring me problem. More importantly I was concerned that my persecutors would easily*

> *locate me in Jordan. My concerns turned out to be real and I was persecuted in Jordan by those linked with [Britonia].*
>
> *If I return to [Britonia] I will be persecuted. If I return to Jordan I will also be persecuted by my persecutors or I will be persecuted due to the fact that I live in a society that does not accept my views and religion, human rights, politics or general life. This is persecution in itself.*

5. The applicant gave details of his claims in an interview with the delegate, who thought that he *"provided a credible account of his circumstances"* in Britonia. This included details of his harassment in Britonia over several years by unidentified persons:

> *The applicant began to receive threats over the phone. Sometimes the phone would fall silent after he answered. He found that his car had been vandalised on a number of occasions. He claims to have been followed on occasions. Prior to leaving [Britonia] he stayed with a friend for seven months at a place 20kms outside [the capital of Britonia] where few foreigners resided.*

6. The applicant's migration agent submitted:

> *With respect to protection in [Britonia] it is a case of the authorities are willing however unable to protect [the applicant]. As stated specifically to the applicant by the police in [Britonia], the authorities are unable to offer the protection needed. It should also be noted that the case of [the applicant], he is essentially a public figure as he has over the years had significant media exposure. Due to his previous work position in [Britonia], [the applicant] is highly aware of the network system that the Islamist groups have established in Europe and equally aware of their power. There have been numerous incidences in Europe involving Islamist groups that have been reported in the media and unfortunately the authorities, whilst they try, are not in a position to control the Islamist groups. Unfortunately by their very definition, the Islamist groups pose a significant problem for most Western or European nations.*

7. However, the delegate said that there was an *"absence of any serious harm befalling the applicant in the five years since the first threat was made"* and *"it could be speculated upon that those who have threatened the applicant are not willing to go beyond threats as the likelihood of them being apprehended and convicted of a criminal offence would be high"*. He said that he was not satisfied that *"the level*

*of State protection can be regarded as so ineffective that it would allow or give rise to a well founded fear of persecution in Britonia"*.

8. On appeal, the applicant elaborated his claims at a hearing of the Tribunal. A transcript is not in evidence, but there is no reason not to accept the description given by the Tribunal in its statement of reasons.

9. The applicant detailed his activities in the human rights organisation, his known religious profile, and his involvement with the extremist Sheikh and his followers. He told the Tribunal that, after he had assisted the Britonia authorities:

> *he did not see the Sheikh following this occasion, but he received telephone threats on his personal mobile phone as well as [his organisation's] mobile telephone. He was asked about the frequency of these threats. He said the frequency varied; sometimes he received two or three phone calls a day and sometimes once every two weeks from different people.*
>
> *He was asked if he had received threats [over a 4 year period before] he departed Britonia. He said yes, but gradually he took the threats more seriously. He was afraid that they would find him. Sometimes he was in a restaurant when he received phone calls telling him that they knew where he was and that a fatwa had been issued against him. He said the fatwa was issued against him in [year]. He was asked why he did not change his telephone number. He said he did, but they found out his new number through his acquaintances as some of these people felt that it was their duty to follow religious leaders.*

10. The applicant said: *"These organisations threaten people and they fulfil their purpose. When he felt that he could not lead a normal life and could not have a family because he could not guarantee their safety, he left"* Britonia. He said that he made only informal complaints about the harassment to the Britonian authorities, because they told him *"that these people are threatening the whole world and that he had no evidence"*.

11. The applicant gave evidence about his period of residence in Jordan before coming to Australia. He said that 'these people' *"came after him about seven months after his arrival"*. They made inquiries with his family, and looked for him when he moved elsewhere. He was not harmed, but *"he was very scared and just because something did not*

*happen to him did not mean that something would not happen to him. He was either lucky or they were pursuing other tactics"*.

12. In its statement of reasons, the Tribunal agreed with the delegate in concluding that s.36(3) of the Migration Act applied to the applicant. It appears to have accepted the whole of the applicant's claimed history, but it said that it *"does not accept that the applicant's fear of persecution in [Britonia] is well-founded"* so as to take him within s.36(4).

13. This conclusion was based on two key findings:

    i) *"the threats in this case do not give rise to any real chance of persecution for a Convention reason in the reasonably foreseeable future"*; and

    ii) *"if the Tribunal were to accept, which it does not, that the threats against the applicant placed him at a real risk of harm in [Britonia], the Tribunal is satisfied that the level of state protection available to him in [Britonia] is sufficient to remove such a risk"*.

14. The Tribunal's reasons for arriving at both of these findings raise some concerns. These include whether the Tribunal properly appreciated the low probability of the possibility of future harm, which is sufficient under the 'real chance' test of a well-founded risk of persecution. Also, whether it properly took into account the applicant's personal history, when it gave emphasis to the law enforcement framework available to protect the general population of Britonia. Counsel for the applicant gave some of these concerns a legal dimension in his submissions, which addressed several grounds of jurisdictional error going to both of the key findings. In the course of this, both counsel took me to an interesting, but probably academic, issue of whether s.36(3) and (4) implicitly require a decision-maker to be satisfied that the refugee claimant is *"unwilling to avail himself of the protection"* of a third country, notwithstanding that this element in the Convention definition of 'refugee' is not expressly repeated in these provisions.

15. However, I have accepted the applicant's principal submission, and do not need to examine any of the other grounds of review. His principal submission is that both of the Tribunal's key findings addressed only

the most prominent element in the applicant's fears of returning to Britonia. He submits that the Tribunal considered only the risk of the applicant suffering death or serious physical assault, as he was threatened, and that it failed to appreciate his claim that the past harassment in itself had caused serious harm amounting to 'persecution'. It then failed to assess the risk of this continuing in the future if he returned to Britonia. For the same reason, the Tribunal had also considered the issue of future state protection too narrowly.

16. His counsel relied upon well understood authorities in relation to jurisdictional error, when submitting:

> *3. The applicant claimed, in essence, that he had drawn the enmity of Muslim extremists while he was living in [Britonia]. He said that as a result he was threatened with death, was followed by many people, was forced to hide at the home of a friend outside [the capital city] for some time, moved house on 10 occasions within four years, did not feel safe at work and so had to leave that work even though he loved it, left [Britonia] for Jordan, was pursued in Jordan by people who monitored his father's home and made threatening telephone calls, and his car was vandalised on a number of occasions.*
>
> *4. The Tribunal did not reject any of these claims. However, it dealt with the application for review on the basis that the persecution feared by the applicant was restricted to telephone calls and/or death. Thus, it found, at CB117.3, that the applicant was not harmed in the extended period that he remained in Britonia after the incidents that led to the threats. It dealt with the past events in the following way [117.4]:*
>
> > *Whilst the Tribunal appreciates that the phone calls to the applicant were irksome, disrupting, irritating and even distressful, the applicant was able to continue to work and socialise in Britonia during the 4 years that he was subjected to the threats. On the basis of the evidence before it, the Tribunal is not satisfied <u>that the threats in this case amount to serious harm</u>. The Tribunal is not satisfied that those making the threats against him seriously intended to act upon them and finds that <u>the threats in this case do not give rise to any real chance of persecution</u> for a Convention reason in the reasonable foreseeable future. [emphasis added]*

> 5. *That conclusion is, in itself, indicative of a misunderstanding of what is meant by persecution in s.36(4), a point dealt with below. In any event, by limiting his consideration of past harm to telephone calls, the Tribunal failed to deal with a substantial, clearly articulated argument relying upon established facts. That argument was that the applicant had been persecuted in the past not only by being threatened with death by telephone calls and SMS messages but also, contemporaneously and over an extended period of time being followed, monitored and having his property vandalised to the extent that he not only had to leave his work, change his residence on 10 occasions including finally to leave his city of residence and also to leave the country that he had been residing in since his days as a student to return to Jordan.*

17. Contrary to the Minister's submission that the Tribunal addressed the full breadth of the applicant's claims, I am satisfied that the Tribunal did confine its examination of the future risk of the applicant suffering 'serious harm to the person' within s.91R(1)(b), and failed to consider whether the harassment which the applicant had suffered in Britonia, and feared in the future, itself amounted to 'persecution' within s.36(4) read with s.91R(1) and (2) of the Migration Act.

18. I accept that evidence that the Tribunal confined its consideration appears from the paragraph containing the Tribunal's key findings, which is extracted above in counsel's submission. Its confined consideration is confirmed, and explained, by the Tribunal's preceding paragraph, which clearly addressed only whether the applicant was at risk that the threats of death or violent assault might actually be carried out:

> *In her submission of 15 April 2008 the applicant's representative stated that Islamist "syndicates" are unpredictable by nature, display "unpredictable behaviour" and they generally wait for what they consider to be the "correct time" for an attack. She cited the 11 September 2001 attacks in the US, 7 July 2005 attacks in London and the murder of van Gogh. As indicated above the Tribunal does not accept that the applicant had a profile akin to that of van Gogh or that he could be considered a target in the same vein as New York or London. The Tribunal must assess whether there is a real chance that the applicant will face persecution and just because individuals or organisations may engage in "unpredictable behaviour", it does not necessarily mean that that applicant's chance of facing harm at the hands of those*

*who threatened him is real. The Tribunal does not accept that just because the applicant was threatened in the past by unidentified and/or unpredictable individuals, acting alone or as part of a syndicate, the threats must be fulfilled at some point in the future. In the Tribunal's opinion, if the applicant's behaviour, attitude and views, combined with his refusal to render immigration assistance to Muslim figures, were so offensive to the zealous Muslims who threatened him, it would be reasonable to expect them to have acted upon the threats, at least tentatively, at some point between [years]. The Tribunal does not accept as credible or plausible the argument that the applicant was spared during this period because he was of some asset to the Islamists in the past and that he may have been perceived to be of further continued benefit to them. The applicant had refused to be of assistance to [the Sheikh], had identified him to the police in [year] and had refused to collaborate with [named person] not long after that. In the Tribunal's view it must have been evident to these people and their associates that the applicant was not cooperative and of no benefit to them.* ***Yet he was not harmed in the subsequent extended period that he remained in [Britonia].*** *(emphasis added)*

19. The Tribunal's narrow focusing of the applicant's refugee claim is confirmed in other parts of its 'findings and reasons'. Thus:

- Its opening summary of his claims referred only to his being *"repeatedly threatened until he departed Britonia"*, without referring to the range of harassments which he had suffered in Britonia, and their effect on his life, before he departed.

- Its factual findings, which accepted the applicant's history, emphasised that *"the fatwa that was issued against him in [year] had no apparent consequences and he was not subjected to any form of punishment or harm in the subsequent [number of] years he remained in Britonia"*. The suggestion that the applicant had not suffered 'harm' either confirms that the Tribunal narrowly focused the issue of persecution, or that it overlooked or disbelieved the serious harassment, short of the infliction of actual bodily violence, which the applicant claimed to have suffered. I consider it unlikely that the Tribunal was unaware of this history, and it certainly does not appear to have disbelieved it. Rather, I conclude that the Tribunal thought that it was irrelevant to its consideration of a well-founded fear of persecution for it to consider whether the harassment itself amounted to 'persecution'.

- Similarly, the Tribunal's consideration of state protection addressed the ability of Britonia to protect its inhabitants against *"radical Islamic elements, as dangerous as they may be"*, *"terrorism"*, *"serous criminal behaviour, whether or not committed by radical Muslims"*, and *"violence"*. It did not examine the past or possible future ability of the Britonian authorities to prevent the applicant being harassed in the manner and with the consequences described by him.

20. I accept the applicant's submission that this is a case where I should infer from the absence of any discussion and findings by the Tribunal, showing that it addressed whether the harassment suffered by the applicant in Britonia amounted to 'persecution' as defined in the Migration Act, that the Tribunal failed to appreciate that this was an element in the claims which were before it, and that it was required to address this element even if it concluded that the applicant had never faced a real chance of death or serious personal assault (*Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at [10], [35], [69], [75]).

21. However, the Minister submits that the Tribunal would not have made a material jurisdictional error by failing to address whether the harassment suffered by the applicant in Britonia itself 'involved serious harm to the person' within s.91R(1)(b), so as to be capable of amounting to 'persecution' for the purposes of s.36(4). He submitted that, as a matter of law, it was incapable of being so characterised.

22. Section 91R(1)(b) requires that the Convention definition of persecution for *"one or more of the reasons mentioned in that Article"* does not apply unless *"the persecution involves serious harm to the person"*. This would seem to have definitional consequences when addressing the criterion for a protection visa adopted in s.36(2)(a) by reference to the Refugees Convention. In the present case, both counsel assumed that it also applies to the reference in s.36(4) to *"being persecuted in a country for reasons of race, religion, nationality, membership of a particular social group or political opinion"*. This accords with authority (see *NBLC v Minister for Immigration & Multicultural & Indigenous Affairs* (2005) 149 FCR 151 per Bennett J at [26] and Graham J at [72], Wilcox J contra at [8]).

23. The reference to persecution involving 'serious harm' in s.91R(1)(b) must be read with s.91R(2), which provides:

> *(2) Without limiting what is serious harm for the purposes of paragraph (1)(b), the following are instances of **serious harm** for the purposes of that paragraph:*
>
> *(a) a threat to the person's life or liberty;*
>
> *(b) significant physical harassment of the person;*
>
> *(c) significant physical ill-treatment of the person;*
>
> *(d) significant economic hardship that threatens the person's capacity to subsist;*
>
> *(e) denial of access to basic services, where the denial threatens the person's capacity to subsist;*
>
> *(f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.*

24. The opening words of this provision make it very clear that the list of 'instances' is not intended to 'limit' the meaning of 'serious harm' in s.91R(1)(b). A Tribunal would make a jurisdictional error if it treated the list as exhaustive of the species of 'serious harm' which might be characterised as 'persecution' (see *VTAO v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCA 927 at [57], *NBFP v Minister for Immigration & Multicultural & Indigenous Affairs* [2005] FCAFC 95 & *SZDAG v Minister for Immigration* [2006] FMCA 987). In the present case, since the Tribunal's statement of reasons contain no discussion of the application of these provisions to the applicant's circumstances, it is impossible to determine whether it fell into this error. The section is only mentioned in the usual 'template' general summary of the legislation and authorities.

25. Because the list in s.91R(2) provides only some non-limiting 'instances', the list also cannot be construed as confining any other species of 'serious harm' which might come within that term in s.91R(1)(b), whether by analogy or other process of reasoning. It remains, therefore, appropriate to apply the established jurisprudence as to the concept of 'persecution' covered by the Convention definition. If feared harms come

within that jurisprudence, then they are only excluded by s. 91R(1)(b) if they cannot be regarded as 'involving serious harm to the person', giving those words a meaning which is not limited by s.91R(2).

26. In *VBAO v Minister for Immigration & Multicultural & Indigenous Affairs* (2006) 233 CLR 1, the High Court addressed the meaning of *"threat to the person's life or liberty"* in the instance of persecution provided in s.91R(2)(a). Callinan and Heydon JJ said that s.91R(1) *"provides a manifestation of a statutory intent to define persecution, and therefore serious harm, in strict and perhaps narrower terms than an unqualified reading of any unadapted Art 1A(2) of the Convention might otherwise require"*. However, this does not provide support for reading the provision as now excluding serious harassment of a person which lacks a likelihood or real chance of death or serious physical harm. Nor can such support be found in the joint judgment of Gleeson CJ and Kirby J.

27. Gummow J's discussion of the provision suggests otherwise. He said:

> *[15] This appeal requires attention to that aspect of persecution dealt with in para (b) of s 91R(1), namely, the necessity that the persecution "involves serious harm to the person". In the joint judgment in Guo and under the heading "Persecution", the following was said of that notion:*
>
> > *In Chan [v Minister for Immigration and Ethnic Affairs], Mason CJ referred to persecution as requiring "some serious punishment or penalty or some significant detriment or disadvantage". One other statement of his Honour in that case is also relevant to this appeal. His Honour said: "Discrimination which involves interrogation, detention or exile to a place remote from one's place of residence under penalty of imprisonment for escape or for return to one's place of residence amounts prima facie to persecution unless the actions are so explained that they bear another character." In the same case, Dawson J said that: "there is general acceptance that a threat to life or freedom for a Convention reason amounts to persecution ... Some would confine persecution to a threat to life or freedom, whereas others would extend it to other measures in disregard of human dignity."*

> *[16] Paragraph 19 of the Explanatory Memorandum challenges not these statements which include terms now found in s 91R, so much as perceived inconsistencies in their subsequent application from case to case. The paragraph manifests a concern that the degree of the apprehended "harm" not rise above the level regarded by the Parliament as that accepted by the parties to the Convention as constituting "persecution".*

28. I would respectfully adopt his Honour's opinion that the statutory concept of 'serious harm' was aimed at inconsistencies in the application of the previous High Court jurisprudence on the meaning of 'persecution', rather than to effect a significant rejection or narrowing of that jurisprudence. It confirmed a layer of consideration of the 'seriousness' of harms which must be addressed under the accepted tests deriving from *Chan*, which include *"significant detriment or disadvantage"*, and *"measures 'in disregard' of human dignity"*. The requirement of seriousness tends to confirm the continuing relevance of the opinion of McHugh J in *Minister for Immigration & Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1 at [61]:

> *Given the objects of the Convention, the harm or threat of harm will ordinarily be persecution only when it is done for a Convention reason and when it is so oppressive or recurrent that the person cannot be expected to tolerate it.*

29. McHugh J further explained this test at [65]: *"so oppressive or likely to be repeated or maintained that the person threatened cannot be expected to tolerate it, so that flight from, or refusal to return to, that country is the understandable choice of the individual concerned."*

30. These tests were applied in *Appellant S395/2002 v Minister for Immigration & Multicultural Affairs* (2004) 216 CLR 473 at [31] and [40], where McHugh and Kirby JJ said:

> *Persecution covers many forms of harm ranging from physical harm to the loss of intangibles, from death and torture to State sponsored or condoned discrimination in social life and employment. Whatever form the harm takes, it will constitute persecution only if, by reason of its intensity or duration, the person persecuted cannot reasonably be expected to tolerate it. (see also Gummow and Hayne JJ at [66])*

31. In the present case, the applicant claimed that various acts of threat, intimidation, surveillance, vandalism, etc, occurred with such frequency, over such a period of time, and in such a context where, in fact, he was unable to lead a settled life in Britonia, and where he decided that flight from that country was his only choice to escape from the harassment. On his account, the authorities in Britonia were unable to give him normally expected protections against serious infringements of his human rights, including his rights to a settled residence, unrestricted access to employment, a secure family life, freedom of movement within a country, freedom of expression of religious and political opinions, and freedom of association with respected social organisations (cf. *Universal Declaration of Human Rights, Articles 18, 19; International Covenant on Civil and Political Rights Articles 12, 17, 18, 19, 22 & International Covenant on Economic, Social and Cultural Rights Article 6(1) & 10(1)*).

32. I consider that it would have been open to a Tribunal to have concluded, looking at the applicant's history broadly, that the applicant had faced, and would face, such an intolerable life in Britonia that his flight from that country was well 'understandable', and that the harassment he feared in that country involved, cumulatively, such a serious infringement of his human rights and human dignity as to 'involve serious harm of the person' within s.91R(1)(b).

33. I therefore am satisfied that the Tribunal made a material jurisdictional error by confining its consideration of the applicant's circumstances to his risk of death or serious physical assault. I am satisfied that he is entitled to the relief he claims, and to the costs of the proceedings.

34. I have endeavoured to write this judgment in a manner which would not reveal the identity of the applicant to the persons he fears, but shall allow him 21 days to apply for additional non-publication orders.

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**I certify that the preceding thirty-four (34) paragraphs are a true copy of the reasons for judgment of Smith FM**

Associate: Michael Abood

Date: 20 March 2009