

FEDERAL MAGISTRATES COURT OF AUSTRALIA

SZOLN v MINISTER FOR IMMIGRATION & ANOR

[2010] FMCA 586

MIGRATION – Refugee Review Tribunal – practice and procedure – dismissal pursuant to Rule 13.03C(1)(c) of the *Federal Magistrates Court Rules 2001* by reason of failure of the applicant to appear.

Federal Magistrates Court Rules 2001 (Cth), r.13.03C(1)(c)

Applicant:	SZOLN
First Respondent:	MINISTER FOR IMMIGRATION & CITIZENSHIP
Second Respondent:	REFUGEE REVIEW TRIBUNAL
File Number:	SYG 1237 of 2010
Judgment of:	Emmett FM
Hearing date:	3 August 2010
Date of Last Submission:	3 August 2010
Delivered at:	Sydney
Delivered on:	3 August 2010

REPRESENTATION

No appearance by or on behalf of the Applicant

Counsel for the Respondents: Ms A. Mitchelmore

Solicitor for the Respondents: Ms J. Gallagher, DLA Phillips Fox

**FEDERAL MAGISTRATES
COURT OF AUSTRALIA AT
SYDNEY**

SYG 1237 of 2010

SZOLN
Applicant

And

MINISTER FOR IMMIGRATION & CITIZENSHIP
First Respondent

REFUGEE REVIEW TRIBUNAL
Second Respondent

**EX TEMPORE
REASONS FOR JUDGMENT**

1. The first respondent seeks an order, pursuant to Rule 13.03C(1)(c) of the *Federal Magistrates Court Rules 2001* (Cth), that the proceeding before this Court commenced by way of application filed on 3 June 2010 be dismissed, by reason of the failure of the applicant to appear at today's scheduled hearing.
2. In support of the application the first respondent tendered a letter, dated 26 July 2010, addressed to the applicant, at the only address provided by the applicant to this Court. That letter enclosed by way of service a copy of the first respondent's written submissions that were filed on 26 July 2010 in support of their Response, which was filed on 9 June 2010. The letter also informed the applicant that the matter was listed for hearing today at 10.15am before me, gave the address of the Court and stated that the applicant was required to attend Court on this occasion. The letter also informed the applicant that if the applicant did not attend today's scheduled hearing the respondent would seek

orders from the Court that the proceeding be dismissed, and that the applicant pay the legal costs of the first respondent.

3. It is now 11.05am. There is no appearance by the applicant. There has further been no communication received by this Court from the applicant, or anyone on behalf of the applicant. I am informed by counsel for the first respondent, Ms Mitchelmore, that neither her instructing solicitors, nor the first respondent have received any communication from the applicant about today's proceeding, or otherwise.
4. I note that the applicant attended a directions hearing before a Registrar of this Court on 25 June 2010. On that occasion the applicant was given leave to file and serve an amended application and any evidence by way of affidavit, including any transcript of the Refugee Review Tribunal hearing, by 23 July 2010. The applicant was also directed that, if the applicant wished to rely on recordings of the Refugee Review Tribunal hearing, then notice must be given to the first respondent and the Court by 23 July 2010 to that effect. The applicant was also directed to file and serve written submissions by 28 July 2010. The applicant was referred to the Court's legal advice scheme, and I note that telephone advice was provided to the applicant on 16 July 2010 and written advice forwarded on the same date in accordance with that scheme.
5. There has been no document filed by or on behalf of the applicant either in accordance with those directions or otherwise. The Orders plainly set down the proceeding for final hearing today at 10.15am and provide the address of this court room. The applicant attended in person at the directions hearing, with the assistance of an interpreter.
6. In the circumstances, I am satisfied that the applicant was aware of today's proceeding and for whatever reason has chosen not to attend. In the circumstances, I am satisfied that the order sought by the first respondent ought be made.
7. Accordingly, I order that the proceeding before this Court, commenced by way of application filed on 3 June 2010, be dismissed pursuant to r.13.03C(1)(c) of the *Federal Magistrates Court Rules 2001* (Cth) by

reason of the failure of the applicant to attend today's scheduled hearing.

RECORDED : NOT TRANSCRIBED

8. I Order that the applicant pay the costs of the first respondent, fixed in the amount of \$4,800. I note that such sum is in accordance with the costs schedule of this Court. I also direct that that the first respondent notify the applicant forthwith of the orders made by the Court today, and provide to the applicant a copy of r.16.05 of the *Federal Magistrates Court Rules 2001* (Cth).

I certify that the preceding eight (8) paragraphs are a true copy of the reasons for judgment of Emmett FM

Associate:

Date: 6 August 2010