FEDERAL COURT OF AUSTRALIA

SZBQS v Minister for Immigration and Citizenship [2009] FCA 1031

MIGRATION – Refugee Review Tribunal – whether letter from Tribunal to individual requesting verification of documents constituted 'additional information' for the purposes of s 424(2) of the *Migration Act 1958* (Cth) – whether documents provided by appellant to Tribunal constituted 'information' – whether falsified documents constituted 'information'

Words and phrases: 'additional information'

Migration Act 1958 (Cth) ss 424(1), 424(2), 424(3), 424A, 424B, 425, 441A
Migration Legislation Amendment Act (No. 1) 1998 (Cth)
Migration Legislation Amendment Act (No. 1) 2009 (Cth)
Migration Regulations 1994 (Cth) r 4.35

Minister for Immigration and Citizenship v SZKTI and Another (2009) 258 ALR 434 considered
SZKCQ v Minister for Immigration and Citizenship and Another (2008) 170 FCR 236 questioned
SZKTI v Minister for Immigration and Citizenship and Another (2008) 168 FCR 256 disapproved
SZLPO v Minister for Immigration and Citizenship and Another (NSD 1227 of 2008); SZLQH v Minister for Immigration and Citizenship and Another (NSD 970 of 2008); SZLPP v Minister for Immigration and Citizenship and Another (NSD 1486 of 2008) (2009) 255 ALR 407 followed
SZMBS v Minister for Immigration and Citizenship and Another (2009) 176 FCR 141 followed

SZBQS v MINISTER FOR IMMIGRATION AND CITIZENSHIP and REFUGEE REVIEW TRIBUNAL
NSD 1421 of 2008

COWDROY J
16 SEPTEMBER 2009
SYDNEY

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
GENERAL DIVISION **NSD 1421 of 2008**

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

BETWEEN:	**SZBQS** **Appellant**
AND:	**MINISTER FOR IMMIGRATION AND CITIZENSHIP** **First Respondent**
	REFUGEE REVIEW TRIBUNAL **Second Respondent**

JUDGE:	**COWDROY J**
DATE OF ORDER:	**16 SEPTEMBER 2009**
WHERE MADE:	**SYDNEY**

THE COURT ORDERS THAT:

1. The appeal be dismissed.

2. The Appellant pay the costs of the First Respondent assessed in the sum of $3,900 pursuant to O 62 r 40C(4) of the Federal Court Rules.

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.

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JUDGE:	**COWDROY J**
DATE:	**16 SEPTEMBER 2009**
PLACE:	**SYDNEY**

REASONS FOR JUDGMENT

1 The appellant appeals from the decision of Driver FM delivered on 22 August 2008 which dismissed an application for judicial review of a decision of the Refugee Review Tribunal ('the Tribunal') handed down on 26 February 2008. The Tribunal's decision affirmed a decision of a delegate of the Minister for Immigration and Citizenship ('the Minister') to refuse to grant a protection (Class XA) visa to the appellant.

BACKGROUND

2 The appellant is a citizen of Bangladesh who arrived in Australia on 13 April 2000. On 24 May 2000 the appellant lodged an application for a protection visa with the then Department of Immigration and Multicultural Affairs. A delegate of that Department refused the application for a protection visa on 25 August 2000. On 25 September 2000 the appellant applied to the Tribunal for a review of that decision.

3 The first Tribunal decision affirming the delegate's decision was handed down on 27 November 2002. On 29 April 2003 this Court made orders by consent quashing the

decision and remitting the application to the Tribunal for a second hearing. On 22 September 2003 the Tribunal (differently constituted) affirmed the delegate's decision.

4 Some time after the making of that decision, the Tribunal wrote to the Ahmadiyya Muslim Association Australia ('the Australian Association') in December 2004 seeking general information concerning the followers of that faith. Such enquiry was not made specifically in connection with any review of the appellant. However, a copy of the response of the Australian Association (the '2004 letter') formed part of the Tribunal's file.

5 On 23 March 2006, this Court again made orders by consent quashing the decision mentioned above at [3] and remitting the application to the Tribunal. The third Tribunal (differently constituted) affirmed the delegate's decision in a decision handed down on 4 July 2006. On 22 June 2007 Federal Magistrate Scarlett remitted the application to the Tribunal for a rehearing (the fourth hearing).

6 Before the Tribunal at its fourth hearing (the hearing to which this appeal relates), the appellant claimed that he was a member of the Ahmadi community and that on a number of occasions he was beaten by fanatical Muslims. The appellant claimed that his family was subject to trouble from Sunnis after they noticed the appellant and his family had been attending a Qadiani mosque. The appellant also claimed that he was attacked while attending college and that in 1998 he was kidnapped by people from the Awami league who tried to extort money from him. The appellant claimed that on 18 March 1999 after coming out of a Qadiani mosque he engaged in an argument with people from Jamaat-e-Islami who attacked him. The appellant claimed that he went into hiding but after some time he resumed living at his home. The appellant claimed that he was attacked on 20 January 2000 at a bus stop by members of the Awami League and the Chhatra Shibir, who left him for dead.

7 During its hearing on 10 September 2007 the appellant provided the Tribunal with a letter. Such letter, purportedly written by the National Amir of the Ahmadia Muslim Jamat, Dhaka was dated 2 September 2007 and addressed 'TO WHOM IT MAY CONCERN'. Such letter stated:

> He [the appellant] is permanent citizen of Bangladesh and also he is regular & Permanent Member of Ahmadia Muslim Jamat, Bangladesh.

> I know him. He is very good man. He bears a moral character. He does not engage of terror work of this country and society.
>
> I wish him every success in life.

Before an earlier Tribunal hearing the appellant had provided a similar letter dated 25 July 2000.

8 During the course of the fourth hearing the Tribunal asked the appellant whether he had any objection to the Tribunal contacting the Australian Association to request that it communicate with the National Amir (or Ameer) of the Ahmadiyya Muslim Jamat, Bangladesh ('the Bangladesh Association') to verify whether the appellant was an Ahmadi as claimed in letters purportedly written by the National Amir dated 25 July 2000 and 2 September 2007. The appellant agreed to such proposal. The Tribunal accordingly wrote to the Australian Association by letter dated 12 September 2007 (the 'September 2007 letter') seeking information concerning the validity of the appellant's documents and requesting that the Bangladesh Association be consulted. A response was received from the Australian Association dated 11 November 2007 which attached a letter dated 9 November 2007 from the National Ameer of the Bangladesh Association.

9 The letter signed by the National Ameer was entitled '*Country information request Ref: BGD 32360 Dt. September 12, 2007 of Refuge* [sic] *Review Tribunal of Australian Government*' and relevantly states:

> Please refer to your letter Ref: 269 dt. 24/10/07 regarding above request. For your kind information both the certificates dt. 25/7/2000 and 02/9/07 attached with the subject letter which were submitted by [the appellant] are false. The letter head is fake, the signature of National Ameer is also fake. Otherwise such fraudulent person can not be a member of our Community.

10 The Tribunal forwarded this information to the appellant in a letter dated 20 November 2007 ('the s 424A letter'), which was provided to the appellant pursuant to s 424A of the *Migration Act 1958* (Cth) ('the Act'). The appellant was invited to submit any comment.

11 By letter dated 3 December 2007 the appellant acknowledged receipt of the Tribunal's s 424A letter, and requested a period of three weeks to make a response. By letter dated 4 December 2007, the Tribunal advised the appellant that it would allow him until 10 January

2008 to provide a response. The Tribunal also advised that in the absence of any comment, it might proceed to make a determination.

12 By letter dated 8 January 2008, the appellant requested a further three weeks to respond. By letter dated 9 January 2008, such request was declined.

13 No further communication was received from the appellant. On 6 February 2008 the appellant was notified that the Tribunal's decision would be handed down on 26 February 2008.

THE TRIBUNAL DECISION

14 The Tribunal found that there were good reasons not to accept substantial portions of the appellant's evidence. The Tribunal found numerous inconsistencies in the appellant's evidence regarding the various incidents of persecution claimed, including the alleged attack at college, the attack on the appellant's family home, the kidnapping, the attack on leaving the mosque and the attack at the bus stop. The Tribunal found that such inconsistencies cast doubt on the veracity of the appellant's claims and on his credibility. The Tribunal considered the appellant to be untruthful. The Tribunal found that there was no real chance of persecution if the appellant returned to Bangladesh, and upheld the delegate's decision.

APPLICATION IN THE FEDERAL MAGISTRATES COURT

15 By application filed in the Federal Magistrates Court of Australia on 25 March 2008 the appellant sought judicial review of the Tribunal's decision.

16 Before Driver FM the appellant claimed:

1. The Tribunal did not consider an integer of the appellant's claims, namely that on a number of occasions he was attacked by the extreme Sunni Muslims in Bangladesh.
2. The Tribunal failed to allow the appellant further time to produce documents relevant to the determining factor in the Tribunal decision.
3. The Tribunal failed to consider the current prevailing situation in Bangladesh.
4. The Tribunal breached s 424(2) of the Act because there is no evidence that the approach to the Bangladesh National Ameer (through the Ahmadiyya Muslim Association Australia) was in writing.
5. The Tribunal decision was in breach of s 425 of the Act.

17 Driver FM found that the Tribunal had considered each of the alleged attacks or kidnapping claims made by the appellant. However, as the Tribunal had rejected the appellant's claims to be an Ahmadi, his Honour concluded that it was unnecessary for the Tribunal to deal with each and every assertion of harm suffered by the appellant.

18 As to the second ground, his Honour found that the appellant had ample time to respond to the Tribunal's s 424A letter and that no attempt had been made by the appellant to provide the information sought by the Tribunal.

19 His Honour found the third ground had no substance as the issue of the current situation in Bangladesh was raised by the appellant, and the Tribunal was entitled to have regard to independent country information.

20 As to the fifth ground of appeal regarding the alleged breach of s 425 of the Act, his Honour was satisfied that the Tribunal put the appellant on notice that his claim to be an Ahmadi was subject to question. His Honour noted that the Tribunal recorded that it '*asked the appellant if he had any objection the Tribunal checking with the Ahamdiyya Muslim Association of Australia to ascertain whether he was in fact an Ahmadi as he claimed*'. His Honour noted that the appellant told the Tribunal that he wanted the Tribunal to make such an inquiry of the Australian Association. His Honour found no breach as alleged.

21 Driver FM then considered whether the Tribunal failed to comply with the requirements of s 424B of the Act in respect of the enquiry made of the Australian Association. His Honour found that the Tribunal's request for information from the Australian Association was a request falling within s 424 of the Act and that consistent with *SZKTI v Minister for Immigration and Citizenship and Another* (2008) 168 FCR 256 the Tribunal was bound to meet the requirements of s 424B of the Act in making the request. His Honour observed that the request was made in writing and found that this implicitly required a written response, given that the request was formal and written. His Honour considered that the role of the scheme of s 424B of the Act is to distinguish between invitations calling for a written response and invitations calling for an oral response at an interview, and that in the absence of an invitation to attend an interview it was clear that a written response was called for. His Honour found that the obligation to specify the manner of response contained in

s 424B(1) of the Act is not breached when the manner of response is obvious from the invitation.

22 His Honour observed that in the absence of the application of the deemed receipt provision in s 441C(4) of the Act, the date of receipt was unknown, and that in these circumstances the prescribed time periods could not have any relevant application. His Honour found that there was no obligation on the Tribunal to specify a prescribed period for response and that the Tribunal did not specify any period for a response. The fact that it waited until well after any potentially relevant period would have expired for a response suggested that the Tribunal took the view that no period for a response was prescribed and that the response was to be given within a reasonable period for the purposes of s 424B(2) of the Act.

23 His Honour observed that before sending its request to the Australian Association, s 441A(4) of the Act required the Tribunal to confirm the address of such Association with the Association for the purposes of that review but that there was nothing to indicate that the Australian Association had provided its address to the Tribunal in connection with the Tribunal's review. Driver FM inferred from the evidence that this was not done and found that since s 441A of the Act was not followed, s 441C(4) of the Act and r 4.35 of the *Migration Regulations 1994* (Cth) did not apply.

24 Finally, his Honour considered whether the breach of s 441A(4) of the Act was a jurisdictional error. His Honour concluded that Parliament did not intend to deprive the Tribunal of the ability to write to a recipient at an address already known to it subject to the proviso that the recipient could not be deemed to have received the correspondence and must be given reasonable time to respond. His Honour concluded that the Tribunal did not commit a jurisdictional error in failing to follow s 424B of the Act.

APPEAL TO THIS COURT

25 On 10 September 2008 the appellant filed in this Court a Notice of Appeal from the decision of Driver FM. The appellant raises the following grounds of appeal:

1. The Tribunal failed to comply with s 424B of the Act.
2. The Federal Magistrate erred in failing to consider the application of ss 424, 424B and 441A of the Act to a request by the Tribunal to the office of the National

Ameer of the Ahmadiyya Muslim Jamat in Bangladesh made via the intermediary of the Ahmadiyya Muslim Jamat in Australia.

3. The Tribunal failed to comply with its obligations under s 425 of the Act.

26 The third ground of appeal was not pressed.

HISTORY OF PROCEEDINGS

27 The hearing of this appeal was fixed for 19 November 2008. However, since the decision in *SZLPO v Minister for Immigration and Citizenship and Another (NSD 1227 of 2008); SZLQH v Minister for Immigration and Citizenship and Another (NSD 970 of 2008); SZLPP v Minister for Immigration and Citizenship and Another (NSD 1486 of 2008)* (2009) 255 ALR 407 was then pending before the Full Court of the Federal Court of Australia, the hearing of these proceedings was adjourned. On 4 May 2009 the Full Court gave judgment in *SZLPO*. The Court then contacted the parties to enquire whether they wished to make further oral or written submissions. The parties replied in the affirmative. The Minister filed a Notice of Contention on 18 August 2009, both parties made further written submissions and the Court listed a further hearing on 18 August 2009 for oral submissions.

NOTICE OF CONTENTION

28 The following issues are raised by the Minister's Notice of Contention:

1. The learned Federal Magistrate erred in concluding that the request to the Australian Ahmadiyya Association was a request falling within the purview of s.424 of the Act, thereby enlivening the requirements of s.424B of the *Migration Act* 1958 (Cth).

2. The learned Federal Magistrate erred by concluding that there was no jurisdictional error in the Tribunal's decision because the:

    a Tribunal was required to confirm the address of the Australian Ahmadiyya Association for the purposes of the review and that its (inferred) failure to do so rendered ss.441A(4), 441C(4) of the Act and regulation 4.35 of the *Migration Regulations 1994* (Cth) ("Regulations") inoperable; and

    b the effect of the preceding sub-paragraph was that the absence of a prescribed period for response for the purpose of s.424B(2) was not enlivened.

3. The learned Federal Magistrate erred by concluding that s.424B(1) applied in the present case because the Australian Ahmadiyya Association is not a natural person.

4. Contrary to the conclusions of the Federal Magistrate as set out in paragraphs [1]

to [3] above, the request to the Australian Ahmadiyya Association did not come within the ambit of ss.424 and 424B because:

a the Australian Ahmadiyya Association is not a natural person.

b it was not a request seeking "*additional information*" within the meaning of s.424 of the Act as no information had previously been provided by the Australian Ahmadiyya Association or Mr Mahmood Ahmed in connection with the appellant's review.

c Even if the Tribunal did breach s.424 of the Act, any such error arguably did not go to jurisdiction.

5. In the alternative, if the Court finds jurisdictional error the first respondent respectfully asks that the Court exercise its discretion and withhold relief.

ISSUES FOR DETERMINATION

29 It is convenient to deal with the issues raised by the Notice of Contention since the resolution of those issues will assist in the resolution of this appeal. The critical issue is whether s 424(2) of the Act applied to the inquiry made by the Tribunal in its September 2007 letter. The resolution of this issue in the negative would have the consequence that the issues raised by the appellant, each of which concern the application of the requirements of s 424(2), will not arise.

30 The appellant relies upon the letters of 25 July 2000 and 2 September 2007 ('the false letters') as constituting original 'information' supplied to the Tribunal, and submits that the Tribunal's September 2007 letter is therefore a request for 'additional information'. The appellant alternatively submits that the Tribunal obtained 'information' by its request of the Australian Association made in 2004. Accordingly, its 2007 request was one for 'additional information'.

31 The appellant submits that as the September 2007 letter was seeking 'additional information', the Tribunal was required to comply with the requirements of s 441A by giving notice of the request to the last address provided to the Tribunal (s 441A(4)(c)(i)) or to the last residential or business address of the person (s 441A(4)(c)(ii)); that the invitation to provide the additional information was required to specify the way in which the information was to be provided as required by s 424B(1); and also to specify the time in which the information was to be furnished as required by s 424B(2). The appellant submits that failure to comply with such procedures led to jurisdictional error.

32 The Minister submits that the learned Federal Magistrate erred in his finding that the request to the Association made by the September 2007 letter '*was a request falling in the purview of s 424*'.

FINDINGS

33 The Court will address the issue of whether the request of the Tribunal to the Australian Association made by its September 2007 was a request for 'additional information' as referred to in s 424(2) of the Act. Prior to the amendments made by the *Migration Legislation Amendment Act (No. 1) 2009* (Cth) which came into force on 15 March 2009, s 424 provided:

> **Tribunal may seek information**
>
> (1) In conducting the review, the Tribunal may get any information that it considers relevant. However, if the Tribunal gets such information, the Tribunal must have regard to that information in making the decision on the review.
>
> (2) Without limiting subsection (1), the Tribunal may invite a person to give additional information.
>
> (3) The invitation must be given to the person:
>
> (a) except where paragraph (b) applies–by one of the methods specified in section 441A; or
>
> (b) if the person is in immigration detention–by a method prescribed for the purposes of giving documents to such a person.

34 Sections 424, 424A, 424B and 424C were inserted into the Act by the *Migration Legislation Amendment Act (No 1) 1998* (Cth). The Explanatory Memorandum states that these sections provide a code of procedure to be followed by the Tribunal in conducting its review.

35 In his decision, Driver FM relied upon the decision of the Full Court in *SZKTI*. In that decision at [53], the Full Court considered whether a telephone call made by the Tribunal to a church leader who had previously signed a letter concerning the appellant in those proceedings was a request for 'additional information' within s 424. The Full Court found that the telephone enquiry sought 'additional information', and that the Tribunal was required to comply with s 441A.

36 The High Court of Australia has reversed the decision of the Full Court in *SZKTI*: see *Minister for Immigration and Citizenship v SZKTI and Another* (2009) 258 ALR 434. The High Court found that the Tribunal was entitled to obtain information as it required and that the requirements of s 424(2) did not restrict the general power of the Tribunal to obtain information under s 424(1) which does not specify how the information is to be obtained. Accordingly, it was unnecessary for the Tribunal to provide an invitation when it sought to obtain the information, because it sought to obtain the information via s 424(1). It would appear from [47] of the High Court's decision that the Tribunal, at least when making enquiries by telephone, can seek information under s 424(1), even if the information as sought would be classed as 'additional information' for the purposes of s 424(2). That is, the mere fact that the Tribunal is seeking 'additional information' does not require it to proceed under s 424(2) and the procedural requirements which flow from it, at least where phone enquiries are concerned. It would appear that this is a significant change in the s 424 jurisprudence, as will be shown below.

37 The Court notes that the parties have not had the opportunity to make submissions based on the High Court's decision in *SZKTI* because such decision was still reserved at the time the parties made their further submissions. Each indicated that they wished the Court to proceed to deliver judgment in this appeal notwithstanding the decision of the High Court in *SZKTI*. The Court therefore makes the above observations in respect of the consequences of *SZKTI* with that wish in mind. The Court does not consider that *SZKTI* alters the law in relation to the specific issues arising in this appeal. Accordingly, further submissions from the parties are not required.

38 In *SZKCQ v Minister for Immigration and Citizenship and Another* (2008) 170 FCR 236 the Tribunal requested during the hearing that the appellant provide information to confirm his membership of a political party. Subsequently documents were provided to the Tribunal by the appellant in those proceedings from two persons purportedly verifying the appellant's membership of that organisation. These documents were then referred by the Tribunal to the Australian High Commission in Islamabad seeking answers from party officials concerning the appellant's claims. A response was received and was forwarded by the Tribunal to the appellant inviting comment. The Full Court held that the Tribunal's enquiries made of the Bangladeshi persons and the replies constituted 'information'.

39 The Full Court in *SZKCQ* found, consistent with the Full Court's decision in *SZKTI*, that the provisions of ss 424(3) and 424A(1) had not been satisfied. In view of the High Court's decision in *SZKTI* as discussed above, the decision in *SZKCQ* must be treated with reserve.

40 In *SZLPO* the Full Court considered the nature of 'additional information' within s 424 of the Act. In those proceedings the appellant claimed to be a member of the Ahmadiyya faith and to have suffered persecution by Sunni Muslims in Bangladesh. In support of his claim he provided the Tribunal with a letter on the letterhead of the '*Ahmadiyya Muslim Jamaat, Krora, Bangladesh*' apparently signed by the President of that organisation which purported to commend the appellant as an Ahmadi. The letter was addressed 'To Whom it May Concern'. Such letter had been provided prior to the hearing and at the hearing the appellant agreed that the Tribunal should make inquiries to verify his claims. As a result the Tribunal accordingly wrote to the Department of Foreign Affairs and Trade ('the Department') asking it to conduct inquiries with the office of the National Amir in Bangladesh via the Ahmadiyya Muslim Association of Australia. Subsequently the Department furnished the Tribunal with information provided by the National Amir. It confirmed that the appellant was not a member of the Ahmadiyya Muslim Jamaat.

41 The Tribunal thereafter wrote to the appellant furnishing the information it had received from the Department and inviting the appellant to comment. The appellant claimed that the Tribunal's decision was affected by jurisdictional error because the Tribunal had '*invited the Amir to give additional information*' and as such s 424(3) required the Tribunal's invitation to be given to the National Amir by one of the methods specified in s 441A.

42 The Full Court in *SZLPO* referred to the decisions in *SZKTI* and in *SZKCQ*. It summarised the findings in those two decisions as follows at [85]:

> *SZKTI* and *SZKCQ* establish that:
>
> (1) s 424 is **a** source of the Tribunal's power to get information (subs (1)) and is **the** source of the Tribunal's power to get "additional information" that falls within the meaning of that expression in s 424(2) (subs (2)), other sources for the getting of information having been noted by us at [13]-[19] above;
>
> (2) where there is an invitation from the Tribunal to give "additional information" within the meaning of s 424(2), s 424(3) makes it mandatory for that invitation to be conveyed by a document given to the invitee by one of the methods specified in s 441A;

> (3) failure to comply with s 424(3), where it applies, is jurisdictional error;
>
> (4) unless it is provided in the course of the hearing, information will be "additional information" within s 424(2) at least if it is additional to information previously given by the particular invitee to the Tribunal.
>
> The fourth proposition above leaves to be resolved by us the question whether information can be "additional information" within s 424(2) if it is additional to information obtained by the Tribunal from sources other than the invitee.
>
> [Emphasis in the original]

43 The High Court's decision in *SZKTI* at [47] appears to render (1) and (2) above incorrect insofar as s 424(2) would appear to no longer be the only source of the power of the Tribunal to seek 'additional information', at least where such 'additional information' is sought by telephone. However, the High Court's decision in *SZKTI* does not appear to disturb the observation in (4) above, which is the relevant matter for consideration in this appeal. The reasoning grounding (4) is relevantly found in paragraph [99] of *SZLPO* where the Full Court said:

> The view that "additional information" means "information additional to any information already possessed by the Tribunal, whether it came from the invitee or not" is problematic. The written invitation régime would then apply to all information that the Tribunal might invite a person to give after the Tribunal first became seized of any information at all unless a contrary indication could be found (cf SZKCQ at [49]-[51])). Presumably the first time the Tribunal becomes seized of information is when the Secretary sends documents to the Registrar under s 418(3). We suggest that a more limited meaning of "additional information" must be looked for. Again, that which suggests itself is "information additional to information previously given to the Tribunal by the invitee".

44 The Full Court said at [88]:

> It [s 424(2)] is also not engaged when a tribunal contacts a library, agency or body that it has had no previous contact with in relation to a particular review because it is not seeking additional information from that person.

45 In *SZMBS v Minister for Immigration and Citizenship and Another* (2009) 176 FCR 141 the Full Court considered a letter headed 'TO WHOM IT MAY BE CONCERNED' [sic] written by the Minister of a local church stating:

> This is to confirm that [the appellant] has been meeting regularly with the church since August 2007.
>
> Please do not hesitate to contact William Poh ([mobile telephone number]) should you have a further enquiry.

46 At [36] of *SZMBS* the Full Court, having cited *SZLPO*, said:

> It is significant that the letter of 3 February 2008 from the Local Church is not addressed to the Tribunal and was not provided to the Tribunal by Brother Poh. Rather, it was given to the Tribunal by the appellant. Thus, as at the time when the Tribunal telephoned Brother Poh, Brother Poh had not given any information to the Tribunal concerning the appellant.

47 At [34] the Full Court observed:

> The language of s 424(2) is subject to possible ambiguity. Section 424(2) refers to the Tribunal inviting the person to give *additional information*. A question arises as to whether that refers to information that is additional to information that the Tribunal has already obtained from any source, such as from the applicant or pursuant to s 424(1), or to information that is additional to information that the Tribunal has already obtained from the person to be invited. The possible inconvenience referred to above might suggest that s 424(2) is concerned with inviting a person who has already given information to the Tribunal to give additional information. In such a case, the person may well have provided an address to the Tribunal in connection with the review. Accordingly, the preferable view is that s 424(2) refers to information additional to information previously given to the Tribunal by the person to be invited (see *SZLPO v Minister for Immigration and Citizenship* (2009) 255 ALR 407 at [99]-[100]).

48 At [37] the Full Court found:

> However, the Tribunal was not inviting Brother Poh to give additional information within the meaning of s 424(2). At most the Tribunal was making an enquiry as to whether Brother Poh had relevant information to give to the Tribunal. It did not invite him to give information, much less additional information.

Was the 2004 letter 'information'?

49 In the present appeal, the Tribunal was aware of the address of the Australian Association at the time it determined the appellant's application. As mentioned at [4], by letter dated 7 December 2004 the Tribunal had written to Mr Nasir Kahlon, General Secretary of the Australian Association, seeking information in respect of persons of the Ahmadiyya community generally. Such letter was written by the Senior Researcher, Country Research of the Refugee Review Tribunal. Relevantly the letter states as follows:

> The Tribunal is currently assessing the claims of a Bangladeshi citizen who states that he belongs to the Ahmadiyya community. The Tribunal would appreciate answers to the following questions:
>
> 1. *If the applicant approached the Ahmadiyya Association would he be provided with a form of certification stating that he is an Ahmadiyya? If so, how would the Ahmadiyya Association test his credibility?*
> 2. *How else might an applicant have his claim to be an Ahmadiyya verified?*
> 3. *In a letter, dated 3 September 1997, you informed the Tribunal that when an*

> *Ahmadi submits an application to the Department of Immigration "he/she always provides a letter with the application issued by us stating that the person is a member of our community". Is this still the case? Or was your statement in reference to the now defunct Ahmadi (Special Assistance) (Class BJ) visa? A copy of your earlier letter is attached.*
>
> Please be advised that the Refugee Review Tribunal is an independent Tribunal set up by legislation to undertake merit review of applications for refugee status of persons in Australia. Our website URL at http://www.rrt.gov.au contains more information about the Tribunal. One of the functions of the Country Research Unit is to obtain information to support the review function of the Tribunal.

50 In response to such letter Mahmood Ahmad, Amir and Missionary In-charge, the Australian Association responded on 12 December 2004 (the 2004 letter) providing the information requested. The letter concluded:

> Any queries concerning applications of Refugee Status by members of our Community are welcome, free of any obligation. There is no question of charging any fee for supplying any information, which may be of any help to you in discharge of your responsibilities.

51 The 2004 letter did not contain any information in relation to the appellant, nor was it provided to the Tribunal by the appellant. Such information was not supplied in connection with any relevant review, but was information sought generally relating to persons who claimed to be of the Ahmadiyya faith. The information provided by the 2004 letter of the Australian Association was not therefore 'information' for the reasons provided in *SZMBS* at [36]. It must follow that the September 2007 letter could not therefore be a request for 'additional information' within s 424(2) of the Act.

52 The Court rejects the submission of the appellant that the mere placing of the 2004 letter from the Australian Association on the Tribunal's file rendered such letter 'information' for the purpose of the specific review in question as referred to in *SZLPO* and *SZMBS*.

Were the false letters 'information'?

53 The appellant further submits that the Tribunal, in seeking information from the Australian Association was using that Association merely as an agent to obtain 'additional information' from the National Amir in Bangladesh. The appellant relies upon the false letters which he provided to the Tribunal in support of his application as being 'information' and submits that the Tribunal's 2007 request to the National Amir was a request for 'additional information' from him.

54 In this instance, the false letters provided by the appellant were not addressed to the Tribunal, nor were they provided to the Tribunal as the result of an invitation from the Tribunal. Consistent with the finding in *SZMBS* at [36] the letters were not 'information' provided by the National Amir. Any subsequent request by the Tribunal of the National Amir of Bangladesh could not therefore have been a request for 'additional information'. It follows that the alleged agency of the Australian Amir for the purpose of obtaining additional information does not arise, since no 'additional information' as referred to in s 424 was sought.

55 There is a further reason for finding that the Tribunal's enquiry did not constitute a request for 'additional information'. The two letters provided to the Tribunal by the appellant and purportedly signed by the Amir were fabricated. They had not been written by the Amir. Accordingly, it could not be said that the Tribunal's request of the Amir was for 'additional information' if no information had previously been provided by him.

CONCLUSION

56 In summary, the 2004 letter from the Australian Association was not 'information' since it did not relate specifically to the appellant; it was not provided by the appellant to the Tribunal; and it was not provided in connection with any review of the appellant. Further, the Tribunal's enquiry of the National Amir by its September 2007 letter was not a request for 'additional information' since the Amir had not previously been invited to provide information. That is, neither the National Amir nor the Australian Association had provided '*information additional to information previously given to the Tribunal by the invitee*': see *SZLPO* at [99]. It follows that the September 2007 letter was not a request for 'additional information' within s 424(2) of the Act.

57 It follows from the above that the Federal Magistrate erred in concluding that the September 2007 letter from the Tribunal to the Australian Association was a request falling within the purview of s 424 of the Act, enlivening the requirements of s 424B of the Act.

58 In view of the Court's conclusion, any issue of non-compliance with ss 424A, 424B or 441A of the Act does not arise for consideration. Accordingly, it is unnecessary to determine other issues raised by the Notice of Contention and by the appellant in his submissions.

59 Ground 1 of the Notice of Contention is upheld and the appeal is dismissed with costs.

I certify that the preceding fifty-nine (59) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Cowdroy.

Associate:

Dated: 16 September 2009

Counsel for the Appellant:	Mr Young
Counsel for the First Respondent:	Ms Sirtes
Solicitor for the First Respondent:	Sparke Helmore
Date of Hearing:	18 August 2009
Date of Judgment:	16 September 2009