

Manager, Public Information

23 September 2009

MINISTER FOR IMMIGRATION & CITIZENSHIP v SZIAI & ANOR

[2009] HCA 39

The High Court today held that the Refugee Review Tribunal (RRT) had not fallen into jurisdictional error when it failed to make further inquiry concerning the authenticity of certain certificates relied on by an applicant in his claim for a protection visa.

SZIAI, a Bangladeshi citizen, claimed to have a well-founded fear of persecution if he were to return to Bangladesh. While living in Bangladesh he had converted from the Sunni Muslim faith to become an Ahmadi Muslim. He said that, following his conversion, his life had been threatened by Sunni Muslims and would be again if he were to return. He supported his claims with certificates signed by persons who were purportedly associated with the Ahmadiyya Muslim Jamaat at Khulna in Bangladesh (AMJ Khulna). The certificates stated that SZIAI had taken a responsible role in AMJ Khulna and was always engaged in its activities. The RRT wrote to the Ahmadiyya Muslim Association Australia Inc, enclosing copies of the certificates and asking whether SZIAI was known to Ahmadiyya Muslim Jamaat in Bangladesh (AMJ Bangladesh). The Association responded, enclosing a letter from the National Ameer of AMJ Bangladesh which stated that AMJ Bangladesh had no record of SZIAI and that the certificates were “fake and forged”. In accordance with section 424A of the *Migration Act 1958* (Cth) the RRT wrote to SZIAI’s solicitors seeking comment on a number of things, including the letter from the National Ameer. The solicitors responded to the suggestion that SZIAI was not an Ahmadi, stating “...the applicant disagrees with the information forwarded and states that he is an Ahmadi. He cannot, however, otherwise prove that to be so.”

Having regard to the information in the National Ameer’s letter and the response from SZIAI’s solicitors, the RRT concluded that SZIAI was not a witness of truth and that there was no truth to the claims made in support of his application for a protection visa. As a result, the RRT affirmed the decision of a delegate of the Minister for Immigration and Citizenship refusing SZIAI a protection visa.

SZIAI’s application to the Federal Magistrates Court for judicial review was dismissed. On appeal, a judge of the Federal Court considered that the RRT ought to have made inquiries of the authors of the certificates concerning the National Ameer’s statement that they were forged. The Federal Court held that the RRT’s failure to inquire had rendered its decision manifestly unreasonable, and this constituted a jurisdictional error on the part of the RRT. The High Court granted the Minister special leave to appeal against the Federal Court’s decision.

The High Court noted that a failure on the part of the RRT to make an obvious inquiry about a critical fact, the existence of which is easily ascertained, could in some circumstances be sufficient to constitute a failure by the RRT to undertake its core function, which is to review decisions. However, the High Court found that it was not necessary to explore that principle in this case, for two reasons. First, none of the information available to the RRT indicated that any further inquiry into the authenticity of the certificates would yield a useful result. Secondly, the response from SZIAI's solicitors indicated that SZIAI could add nothing beyond a bare denial of the assertions in the National Ameer's letter. There was no factual basis to conclude that the RRT's failure to inquire meant it had failed to exercise its jurisdiction or committed jurisdictional error. The Court also held that, by giving SZIAI an opportunity to respond to the information in the National Ameer's letter, the RRT had discharged its responsibility to alert SZIAI to any information the RRT considered would be the reason, or part of the reason, for affirming the decision under review. The High Court allowed the Minister's appeal and set aside the decision of the Federal Court.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*