# FEDERAL MAGISTRATES COURT OF AUSTRALIA

*SBLC v MINISTER FOR IMMIGRATION & ANOR [2006] FMCA 1910*

MIGRATION – Review of Refugee Review Tribunal decision – s.424A notices includes information from Interpol alleging applicant wanted for fraud in country of origin – fear of persecution not well-founded – Tribunal goes on to make finding that criminal conduct explains fear of persecution – illogicality of decision – writs to issue.

*Migration Act 1958* (Cth), ss.424A, 422B, 476, 496
*Judiciary Act 1903* (Cth) s.474
*The Constitution*, para 75(v)

*The Plaintiff S157 v The Commonwealth* (2003) 195 ALR 24
*Craig v The State of South Australia* (1995) 184 CLR 163
*MZXGR v Minister for Immigration and Multicultural Affairs* (2006) FCA 1167
*SZGLL v Minister for Immigration and Multicultural Affairs* [2006] FCA 5107
*VBAP of 2002 v Minister for Immigration and Multicultural Affairs* [2005] FCA 965
*SZEEU v Minister for Immigration and Multicultural Affairs* [2006] FCAFC 2
*Nader v Minister for Immigration and Multicultural Affairs* (2000) 101 FCR 352
*Minister for Immigration and Multicultural Affairs v Lay Lat* (2006) 151 FCR 214
*Minister for Immigration and Multicultural Affairs v Epeabaka* (1998) 84 FCR 411
*Minister for Immigration v SGLB* (2004) 78 ALJR 992
*Re Minister for Immigration; ex parte S20/2002* (2003) 77 ALJR 1165

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| Applicant: | SBLC |
| First Respondent: | MINISTER FOR IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS |
| Second Respondent | REFUGEE REVIEW TRIBUNAL |
| File number: | ADG 192 of 2006 |
| Judgment of: | Lindsay FM |
| Hearing date: | 12 October 2006 |
| Date of last submission: | 12 October 2006 |
| Delivered at: | Adelaide |
| Delivered on: | 22 December 2006 |

**REPRESENTATION**

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| Counsel for the Applicant: | In Person |
| Solicitors for the Applicant: | In Person |
| Counsel for the Respondents: | Ms Bean |
| Solicitors for the Respondent: | Australian Government Solicitor |

**ORDERS**

(1) That a writ of certiorari issue directed to the second respondent quashing the decision of the second responded handed down on 31 May 2006.

(2) That a writ of mandamus issue directed to the second respondent requiring the second respondent to determine according to law the review of the decision of the delegate of the first respondent dated 3 February 2005.

# FEDERAL MAGISTRATES COURT OF AUSTRALIA AT ADELAIDE

## ADG 192 of 2006

**SBLC**
Applicant

And

**MINISTER FOR IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS**
First Respondent

**REFUGEE REVIEW TRIBUNAL**
Second Respondent

## REASONS FOR JUDGMENT

1. This is an application pursuant to s.496 of the *Migration Act 1958 (Cth)* (hereinafter referred to as "the Act"). The applicant seeks orders by way of judicial review. This Court has the same original jurisdiction in relation to judicial review of migration decisions as the High Court has under paragraph 75(v) of The Constitution of the Commonwealth of Australia.

2. None of the provisions of s.476 of the Act which deal with the circumstances in which the Court cannot exercise the jurisdiction apply. In particular, the decision is not a primary decision. Section 474 of the Act, however, does apply and the decision, the subject of this application, is a privative clause decision and must be regarded as final and conclusive unless the decision can be demonstrated to have been vitiated by jurisdictional error as that concept was explained in relation to the provisions of the Act relating to migration decisions in *Plaintiff S157 v The Commonwealth* (2003)

195 ALR 24 and more generally as the concept was explained in cases such as *Craig v The State of South Australia* (1995) 184 CLR 163.

3. The relevant decision of the Refugee Review Tribunal ("the Tribunal") was made on 31 May 2006. The application to this Court was filed within time on 6 July 2006. The decision was the second time the Tribunal had heard the applicant's review from a decision of the delegate of the Minister not to grant him a protection visa. That decision was made on 3 February 2005 and the first Tribunal decision, to affirm the decision not to grant the protection visa, was made on 8 August 2005. By consent the Federal Court of Australia on 3 February 2006 remitted the matter for re-consideration to the Tribunal and it is in relation to the Tribunal's second decision to affirm the decision not to grant the applicant a protection visa that the application is made to this Court.

4. The application specifies two grounds. The first relates to the use made of information provided by Interpol and is based on an argument as to illogicality or irrationality in the decision making process. The second can be broken up into two discrete acts – one as to the use of information relating to applications to "Decree 31/CP" and the second being a very generalised assertion as to bias on the part of the Tribunal.

5. The applicant's claim before the Tribunal was supported by his own statutory declaration. In addition, the Tribunal had a statutory declaration from an interpreter as to the circumstances relating to the dating of a Summons forwarded by the applicant's relatives and served on the applicant's wife in May 2003. That issue was one which was of some significance at the first Tribunal hearing, but nothing appears to have turned on it at the second hearing. A statutory declaration from the applicant's migration agent was to the same effect. There was a statement from the applicant's wife. The applicant gave oral evidence to the Tribunal on 3 April 2006 and he responded with a second statutory declaration to a s.424A Notice from the Tribunal dated 4 April 2006. His response also included further statutory declarations from the applicant's mother and his former neighbour in Vietnam. I should also note that the second application to the Tribunal was supported by a statutory declaration from a Mr Doan, who is President of the Vietnamese Community in South Australia SA Chapter Inc.

6. The applicant is aged 53 years. During the Vietnam war, he worked as an undercover officer of the Intelligence Agency of the South Vietnamese Government. His job was to investigate leads relating to the activities of communist infiltrators in the south. He remained working as an undercover officer until the fall of Saigon to communist forces in 1975. The applicant had married his first wife shortly before the fall of Saigon. The applicant attempted to escape from Vietnam in 1979. He was apprehended in the company of other persons. He had attempted to use forged travel documents. He was charged and tried with various offences. He said that, preceding his sentencing, he was tortured. During the course of the interrogation process he was forced, he says, to sign a document stating that he had not been associated in any way with the Nationalist South Vietnamese Government.

7. In 1980 he was sentenced to eight years imprisonment. He was released in 1986. His wife had given birth to their child in 1976 prior to his arrest. He says that the prison in which he served his hard labour imprisonment was extremely punitive.

8. He says that upon his release from prison he found it very difficult to find work on account of the attitude of the authorities to him but that notwithstanding those difficulties he found work as a driver.

9. He married a second wife in 1989 and a child of that marriage was born in 1992.

10. He says that his arrest in October 1995 related to his association with a Buddhist leader during the period of his first incarceration. The applicant says that he himself is a Buddhist. He says that the Buddhist leader was someone that he actively supported upon his release from his first imprisonment.

11. He says that his 1995 arrest and his subsequent imprisonment for three years was attributed to something described as “Decree 31/CP”.

12. He says that he was released on 18 June 1998 and that, again, despite problems with official documentation he was able to find employment as a driver. He was issued a passport and in October 2002 travelled with a tourist group to Thailand.

13. He travelled to Australia for the first time in December 2002. He returned with his wife to Hong Kong and then back to Vietnam.

14. He says that upon his return to Vietnam the authorities began to pay close attention to him and that in his absence various members of his family and his wife's family had been visited by the authorities. He said that in May 2003 he received a Summons requiring him to attend at the police station. The service of the Summons followed upon his being told by many friends and relatives of interest the authorities had been showing in him. He travelled to Australia again on 10 July 2003 and immediately made application for a protection visa. He had not brought the Summons with him and that was subsequently forwarded by his wife. There were errors associated with the dating of the document and its translation by his migration agent and translator.

15. The statutory declaration of Mr Doan described the position of persons who had formerly been loyal to or associated with the Nationalist South Vietnamese Government in present day Vietnam. It described severe persecution of such persons including torture and execution and the maintenance by the existing Government of Vietnam of a "black list" consisting of persons considered to be hostile to the regime. Mr Doan was of the view that the applicant would be on such a list and that there would be dire consequences for the applicant in terms of imprisonment, torture and discrimination if he were to return.

16. The section 424A Notice forwarded by the Tribunal on 4 April 2006 raised two matters for the applicant's comment as being matters that would form the reason or part of the reason for deciding not to consider him entitled to a protection visa. The first was the information that had been provided to the Tribunal by Australian authorities who had been advised by Vietnamese authorities that he was wanted by the Vietnamese police for fraud offences and the allegation that between May 2001 and December 2001 he with accomplices had made false documents to obtain an illegal tax return to the value of $AUD530,000.

17. The second matter related to the claim by the applicant that his second arrest in 1995 was for three (3) years in accordance with Decree 31/CP. The information that the Tribunal had was that Article 72 of the Vietnamese Constitution, whilst providing that no person could be detained without due process of law, nevertheless, by Decree 31/CP,

permitted local security police to arrest and detain people in the interests of national security for up to two years without a Court order. The information included the fact that the Decree was adopted by the Vietnamese Government in 1997 ie after the applicant's detention. It should be noted that it is said that the Decree permits detention only for two years and not for the three years that the applicant was detained at this time.

18. The applicant's response to the allegation of fraud was to vehemently deny that he had behaved in any way to warrant such a charge being laid. He said that he had never been advised of this accusation before he had left Vietnam and he pointed to his having travelled out of the country on three occasions and back to the country on two occasions after the offences were allegedly committed as being an indicator that the authorities had no notice of such offending. (He dealt with the obvious consideration of why he would be able to travel in and out of the country if he were of such significance as an object of the Government's political policies by saying that the Government must not have considered his "*political offences to be of high priority in terms of my capture*".) His response to the information relating to Decree 31/CP was to accept the accuracy of the information about the date of the commencement of that Decree and the length of detention authorised by it. He said that he was told at the time of his arrest that it was being effected pursuant to an unspecified Decree and that he was eventually told it was Decree 31/CP. As far as fixing a time for being told that, he could only say it was well into his period of detention. He said that no other Decree was mentioned. His response was certainly consistent with his account of this matter in his statutory declaration of 27 March 2006 (in support of his second application to the Tribunal). By the time of his attesting the second statutory declaration, of course, the alleged inconsistency of his account of his arrest in 1995 and the promulgation of Decree 31/CP had already been noted in the first decision of the Refugee Review Tribunal and his explanation for the inconsistency found to be not credible (CB 242). He had claimed that his arrest had been pursuant to Decree 31/CP in the letter dated 29 August 2003 (CB179) which accompanied his initial application for a protection visa.

19. In affirming the decision of the delegate the second Tribunal made the following relevant findings:

(1) That in dealing with him in 1980 the Government of Vietnam had applied to him criminal laws of a general application in a non discriminatory way. The Tribunal characterised his imprisonment for 8 years in a re-education camp as a product of his having breached criminal laws of the country by attempting to escape from it and by forging documents. (CB316)

(2) That following his imprisonment in 1996 life was difficult for the applicant and his family in terms of discrimination and employment on account of his background. (CB316)

(3) That the country information available to the Tribunal indicated that a person with the applicant's background would have found life difficult in the years following the end of the war but that those difficulties have abated to the point where they are no more than minor irritants and that there is no real chance that the applicant would be persecuted in the foreseeable future on account of his background. (CB319)

(4) That the applicant provided assistance to Buddhist monks following his release in 1986 but that the country information indicates that whilst the Government controls organised religion his assistance to the monks would not at that time have provided an explanation for his arrest and detention. (CB319)

(5) That the applicant was not detained on account of Decree 39/CP. (CB319)

(6) That given the Tribunal's findings as to his profile and what the country information informed the Tribunal in relation to the Government's attitude to persons of the applicant's background and religion, the Tribunal did not accept that he was wanted by the authorities at the present time for a convention related reason. (CB320)

(7) That the applicant was wanted by the authorities at the present time on account of his having been involved in criminal activity and that his fear of harm arises from his "alleged involvement in criminal activity" and not on account of any convention related reason and that the harm

he fears in relation to the alleged fraud is on account of his being involved in criminal activity. (CB320)

(8) That considering the evidence as a whole, the applicant does not satisfy the criterion set for a protection visa. (CB320)

20. The first ground of jurisdictional error claimed relates to the Tribunal's reliance on the information relating to the summons being issued on account of the applicant having committed the offences relating to fraud. It is said that the reliance on the information provided by the Vietnamese authorities was made when he was not able to test the allegations and when the information was not produced to him. It is also said in relation to this aspect of the matter that the Tribunal's reasoning was arbitrary and capricious. The applicant appears to have been provided with such information in relation to this matter as the Tribunal had. CB112 sets out the letter from Interpol relating to the information provided by Interpol Hanoi.

21. Section 424A provides as follows:

*"Applicant must be given certain information*

*(1) Subject to subsection (3), the Tribunal must:*

*(a) give to the applicant, in the way that the Tribunal considers appropriate in the circumstances, particulars of any information that the Tribunal considers would be the reason, or a part of the reason, for affirming the decision that is under review; and*

*(b) ensure, as far as is reasonably practicable, that the applicant understands why it is relevant to the review; and*

*(c) invite the applicant to comment on it.*

*(2) The information and invitation must be given to the applicant:*

*(a) except where paragraph (b) applies—by one of the methods specified in section 441A; or*

*(b) if the applicant is in immigration detention—by a method prescribed for the purposes of giving documents to such a person.*

*(3) This section does not apply to information:*

*(a) that is not specifically about the applicant or another person and is just about a class of persons of which the applicant or other person is a member; or*

*(b) that the applicant gave for the purpose of the application; or*

*(c) that is non-disclosable information."*

22. It is to be noted that the obligation relates to the provision of particulars not an obligation to produce documents. (See *Nader v Minister for Immigration and Multicultural Affairs* (2000) 101 FCR 352 at 366.)

23. Section 422B of the Act provides as follows:

*"Exhaustive statement of natural justice hearing rule*

*(1) This Division is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters it deals with.*

*(2) Sections 416, 437 and 438 and Division 7A, in so far as they relate to this Division, are taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters they deal with."*

24. The decision of the Full Court of the Federal Court in *The Minister for Immigration and Multicultural Affairs v Lay Lat* (2006) 151 FCR 214 has made it clear that there is no room for the introduction of common law requirements relating to the natural justice rule provided the legislation is adhered to.

25. So I do not think that there is any valid criticism that can be made of the actual disclosure of the information to the applicant. What of the use to which the Tribunal put the information?

26. The Tribunal's reasoning appears to be that it is unable to find an explanation for the applicant's arrest in 1995 on account of his political activity either historical or in the period following his release in 1986 or on account of his religious affiliations with Buddhist monks. It moves from that position to a state of satisfaction that his fear of return to Vietnam especially in the light of the Summons can only relate to the alleged criminal activity. The Tribunal does not appear to have had any difficulty in accepting the accuracy of the information

provided by the Vietnamese Government relating to the alleged fraud notwithstanding the force of the applicant's argument in relation to the ease with which he had left the country after the alleged offending. (It may be the offending was not discovered until 2003, of course.) The allegations, such as they are, contain no particulars – it is hard to understand what the charge as it relates to an "illegal taxation return" really means – and are obviously such as may be easily made in that form. I confess that I find it difficult to follow that reasoning. The Tribunal could have been well satisfied that the applicant's fear of persecution for a convention reason was unfounded or unreasonable without having to posit the truth of the allegations relating to fraud. The rejection of the well-foundedness of the applicant's fear of persecution for a convention related reason did not entail a finding of an alternative explanation but the Tribunal appears to have considered that necessary. That is the only way in which I can understand the following passage in the Tribunal's reasons (at CB320):

> *"… The Tribunal accepts that the applicant fears that he maybe apprehended. Having regard to the above findings about his political profile and religion, the Tribunal does not accept that he is wanted by the Vietnamese authorities for a Convention related reason. Accordingly, the tribunal does not accept that the summons was issued for the reasons that the applicant gave.*
>
> *To be a refugee within the meaning of the Convention the applicant must fear persecution for one or more Convention grounds. In addition, s 91R(1)(a) of the Act requires that a Convention reason be at least the essential and significant reason or reasons for the persecution. Consistently with Australian law, the* UNHCR Handbook on Procedures and Criteria for Determining Refugee Status *states that persecution must be distinguished from punishment for a common law offence. Persons fleeing from persecution or punishment for such an offence are not normally refugees. It should be recalled that a refugee is a victim – of injustice, not a fugitive from justice (paragraph 56). The Tribunal finds that any harm the applicant fears in relation to the alleged fraud is for reasons of having been involved in criminal activity. It is not for reasons of any Convention ground and it is not Convention related. Any fear the applicant has from the police is not for reasons of an imputed political opinion or religion but arises from his alleged involvement in criminal activity. Likewise any fears the applicant*

*may have that the police would harm him or arrest him is not for any reasons of any Convention ground."*

27. It should be noted that the Tribunal goes further than suggesting that the fear is based only upon the applicant being a person against whom allegations are made, as the expression "*alleged involvement in criminal activity*" might suggest. The Tribunal finds that the fear is based on the applicant having been involved in criminal activity.

28. The Tribunal appears to have overlooked an alternative explanation for the applicant's fears in relation to the Summons. He could genuinely fear persecution on account of political activity, family background or religious affiliation but that fear from an objective assessment be found not to be well-founded, and yet be innocent of the criminal activity with which he is charged. In such a situation, his innocence is a significant part of his subjective assessment that the Summons is politically motivated. He may be wrongly charged but the charges nevertheless made in furtherance of the application of the general criminal law. In any event, the rejection of his account as to why the charges were laid should not entail a finding that his fear is "*for reasons of having been involved in criminal activity*". I am disturbed by the Tribunal's apparent apprehension that it was bound to find that it was his involvement in criminal activity that gives rise to his fears in relation to the Summons. A person innocent of fraud might imagine that a false allegation has been made on account of considerations unrelated to the offending and yet from an objective point of view be regarded as having fears that were not well-founded.

29. The intrusion of an illogicality into the reasoning of the Tribunal can, in certain circumstances, amount to a jurisdictional error although illogicality of reasoning does not of itself equate to error of law (see the discussion of that topic by the Full Court of the Federal Court, *obiter dicta*, in *Minister for Immigration & Multicultural Affairs v Epeabaka* (1998) 84 FCR 411 at 420-422. See also the High Court decision of *Minister for Immigration v SGLB* (2004) 78 ALJR 992 at [38], where reference is made to an earlier High Court decision of *Re Minister for Immigration; ex parte S20/2002* (2003) 77 ALJR 1165 at [37], [52] and [173]. The aforesaid citations all are suggestive of the acceptance of irrationality as a ground for jurisdictional error but the

proper context for the evaluation of the whether such an error exists is to be found at [9] of the latter High Court decision.)

30. Whilst there are difficulties in understanding why the Tribunal was led to the conclusion that the applicant's fear of the police was for reasons of alleged involvement in criminal activity, the finding that preceded that finding, namely that an evaluation of the country information and of the facts relating to the issue of Decree 31/CP led to the conclusion that the applicant's fear of persecution on account of political or religious opinion or membership of a social group was not well-founded, is not vulnerable to the same charge of illogicality and stands independently of the later finding. In no sense is the finding as to fear of apprehension for criminal acts part of the initial finding. It is rather supplementary to it. The evaluation of the country information, charting as it did a gradual improvement in the way in which the government dealt with former members of the Nationalist South Vietnamese Party in the period in the late 1970s and onwards, seems to have preceded in a logical and proper way. There has not been a reliance on any specific part of the country information but rather the conclusions as to whether or not someone in the position of the applicant would be subject to persecution were he to return is based upon an evaluation of a broad range of material.

31. And yet the fact remains that the information provided by the Vietnamese Government through Interpol has been characterised by the Tribunal as information that would be the reason or part of the reason for deciding that the applicant was not entitled to a protection visa. We know that because that is how the obligation to disclose the information has arisen under s.424A of the Act. Clearly, nothing the applicant said in response to the Notice has undermined the Tribunal's reliance on this information as part of the reason for its decision.

32. The materiality of the illogical aspects of the Tribunal's reasoning, as I have characterised this aspect of it, will not effect the outcome of the application before me if there were some alternative basis for the finding of which it was part. If some other basis could be found in the material before the Tribunal to permit the drawing of an inference that the applicant was a fugitive from the criminal justice system in Vietnam in the sense that he had been involved in criminal activity and

that explains his attitude to the summons, then the illogicality would not matter. In that sense, the error would not amount to a jurisdictional error. But I am unable to find such alternative basis in the material before the Tribunal.

33. There is the separate question, of course, as to whether even if this aspect of the Tribunal's reason has infected the decision with jurisdictional error, there is any "*independent and unimpeachable basis for the Tribunal's decision, uninfected by any jurisdictional error*" (see *MZXGR v Minister for Immigration and Ethnic Affairs* (2006) FCA 1167 at [7]). That is a decision relating to a finding of non compliance with s.424A, as are the other decisions often cited in such context (see *SZGLL v Minister for Immigration and Multicultural Affairs* [2006] FCA 5107 and *VBAP of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] FCA 965. So too was the decision of the Full Court of the Federal Court in *SZEEU v Minister for Immigration and Multicultural and Indigenous Affairs* [2006] FCAFC 2 at [231].) I will return to this issue shortly.

34. The Tribunal has indicated in clear terms that the information as to the applicant being wanted for fraud offences has been part of its reason for not being satisfied of the applicant's entitlement to a protection visa. It has come to that conclusion notwithstanding that it seems to me that its finding as to the applicant's fear of persecution not being well-founded was open to it on account of reliance upon the country information and other matters referred to in the findings.

35. The Tribunal quite properly identified the requirement that the convention-related reason needed to be, in the language of s.91R(1)(a) of the Act, "*the significant and essential reason*" for the persecution feared. The Tribunal had already accepted - based on his own evidence and that of his neighbour and wife – that the applicant feared apprehension by the authorities. Because of the country information and the mistaken reliance on Decree 31/CP, the Tribunal does not accept he would be persecuted in future on account of his religion or imputed political opinions. It finds, at the top of CB320, such a fear not to be well founded.

36. In fact, the finding that he was fearful of apprehension follows rather than precedes that finding. One would have expected the logical

process to have been to ask the question, firstly, is the applicant afraid of persecution?; then to ask, is the fear for a convention related reason?; then to ask, is the fear well founded? But the process the Tribunal has adopted appears to be, rather,

(1) the fear is not convention-related;

therefore

(2) it is not well founded; but

(3) the applicant is fearful;

therefore

(4) he must hold that fear because of his criminal activity.

The Tribunal sets off in search of an explanation of the applicant's fears and finds them by positing the applicant as someone who is a fugitive from justice. Accepting the applicant's fears of arrest, the Tribunal should have asked itself the questions as to whether the fear was for a convention-related reason and whether it was well founded. The country information and the elimination of Decree 31/CP as an explanation for his second arrest, answered these questions for the Tribunal. That finding as to it not being satisfied of such matters ought to have been the end of the matter. Instead, the Tribunal embarked upon another enquiry, namely to find the basis of the applicant's fears.

37. As indicated above, this second or supplementary enquiry is separate from the first one. But the conclusion the Tribunal came to – that the applicant fears arrest because he is guilty of criminal conduct – is, the Tribunal tells us, a reason for it finding adversely to the applicant's claim. This suggests that such a finding was utilised as a means of either cross-checking its earlier findings to be sure that the relevant state of satisfaction had been reached, or that the earlier findings were based, by way of unarticulated reliance, upon the finding as to involvement in criminal activity. In whatever way, the focus upon the question of the applicant's participation in criminal activity has, in my view, distorted the decision making process. It indicates an illogicality or irrationality at that stage but is perhaps better categorised as the application of a test based upon an inappropriate or mistaken criterion,

namely alleged criminality. However characterised, it is an error that in my view amounts to a constructive failure to exercise the jurisdiction given by the relevant provisions of the Act.

38. It is not possible in the face of the Tribunal's disclosure of the importance of the issue in the s.424A Notice, to disentangle the error relating to the criminality issue from the other grounds of decision. It is clear that the Tribunal regarded the criminality issue as significant in its rejection of the applicant's claim for refugee status. It is not altogether clear how that was accomplished, but it would be speculative on this Court's part to regard the other matters relied upon in rejecting the claim as being entirely independent of this finding.

39. This ground having been made out and jurisdictional error having been established, it is unnecessary to deal with the other aspects of the applicant's claim but my reading of the Tribunal's reasons suggests a wholly appropriate use of the information relating to Decree 31/CP and the absence of any material which would go any way towards grounding an allegation of bias or apprehended bias on the part of the Tribunal. However, it is strictly unnecessary for me to determine these arguments.

40. For the foregoing reasons, the application for review is allowed and there will be orders made as set forth at the commencement of these reasons.

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**I certify that the preceding forty (40) paragraphs are a true copy of the reasons for judgment of Lindsay FM**

Associate:

Date: 22 December 2006