

# FEDERAL MAGISTRATES COURT OF AUSTRALIA

*MZWPD & ORS v MINISTER FOR IMMIGRATION* [2006] FMCA 12

MIGRATION – Claim for refugee status – whether applicant given opportunity to put claims – whether claims of factual errors amounted to jurisdictional errors.

*Migration Act 1958* (Cth), ss.424, 424A

*Singh v The Minister for Immigration & Multicultural Affairs* (No 2) [2001] FCA 327

Applicant:	MZWPD & ORS
Respondent:	MINISTER FOR IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS
File Number:	(P)MLG 980 of 2004
Judgment of:	Phipps FM
Hearing dates:	25 & 26 July 2005
Delivered at:	Melbourne
Delivered on:	24 January 2006

## REPRESENTATION

Applicant appeared in person

Counsel for the Respondent: Mr Knowles

Solicitors for the Respondent: Clayton Utz

## **ORDERS**

- (1) The Application is dismissed.
- (2) The Applicant pay the Respondent's costs fixed at \$7,500.00.

**FEDERAL MAGISTRATES  
COURT OF AUSTRALIA AT  
MELBOURNE**

**(P)MLG 980 of 2004**

**MZWPD & ORS**

Applicant

And

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

Respondent

**REASONS FOR JUDGMENT**

**Introduction**

1. The applicants are husband and wife and the wife's daughter. Both husband and wife claim to be stateless and former citizens of the U.S.S.R. The daughter claims to be a citizen of Latvia. Prior to their arrival in Australia on visitors' visas in 1997, all were resident in Latvia. Their applications for protection visas were refused and the refusal confirmed by the Refugee Review Tribunal. They now apply for review of the Tribunal's decision.
2. The applicants appeared for themselves. The husband was the only one to make submissions. He claims that he was not given a fair hearing at the Tribunal, and that a number of the Tribunal's findings were wrong

**Chronology**

3. The applicants arrived in Australia on 9 March 1997. On 2 May 1997, they lodged applications for protection visas. Only the applicant husband made distinct claims to be a refugee. He claimed that if he

was returned to Latvia in the foreseeable future, he faced a real chance of persecution for reasons of his Jewish race and religion.

4. In a decision dated 20 October 1997, a delegate of the Minister refused to grant the protection visas. On 7 November 1997, the applicants lodged an application for review with the Tribunal. On 16 July 2004, the Tribunal handed down its decision dated 23 June 2004 affirming the delegate's decision. On 27 July 2004, the applicants applied to the Federal Magistrates Court for review of the decision.

### **The husband's claims for refugee status**

5. The husband claimed that he had been born on 9 October 1956 in Riga, Latvia, then a province of the USSR. His ethnic group and religion are Jewish.
6. The husband said he received 19 years of education in Riga. He attended the University of Latvia from 1977 to February 1984 and the Conservatory of Latvia from 1984 to 1986. He claimed he had no employment from 1985.
7. The husband said that in 1984 he was unlawfully subject to "administrative detention" by the Militia. He was excluded from his University law course by the rector for this reason. He tried, without success, to prove his innocence.
8. He claimed that his exclusion from his law course was due to anti-Semitism. He was not accepted for the second preparatory course at the Conservatory. He claimed this was because he was the only Jew applying.
9. The husband claimed that he suffered humiliation in trying to find a job. He claimed this was because he was a Jew.
10. The husband claimed that he and his mother were discriminated against in their accommodation. They were evicted from the building where they lived for many years. Only four Jewish families were left in the building. He claimed the owners did not want to spend money on Jews. He claimed other tenants were offered alternate accommodation by the owners as required by law but that he was offered inferior

accommodation. They were evicted from the building. He claimed that the Latvian government gave unofficial support to the owner's representative.

11. He claimed that he wrote to a large number of magazines about the eviction, including the US magazine Life. He claimed the letter was intercepted illegally, and that the unofficial support of the owners representative stopped because of this.
12. The husband claimed that the Department of Citizenship and Immigration of Latvia had refused to register him as a permanent resident of Latvia. The husband claimed that he filed a declaration for privatisation vouchers before he left Latvia. When the documents were returned they stated that his date of entry into Latvia was 5 March 1993. He said he was born in Latvia and lived there for many years. He claimed that only people who arrived before 1 July 1992 are considered to be lawful. He claimed the date of 5 March 1993 was entered because he was a Jew.
13. The applicant claimed he could not return to Latvia because he would be persecuted. He claimed he could not obtain Latvian citizenship.

### **The Tribunal's decision**

14. The Tribunal found that the husband was a citizen of the former USSR. His country of former habitual residence was Latvia. The Tribunal found that the husband had a right to return to Latvia and the right to apply for Latvian citizenship. The Tribunal said that the husband's claims of anti-Semitic discrimination in education and employment and other anti-Semitic treatment during the 1980s occurred approximately 15 to 20 years ago, before Latvia became a democratic republic, and before the present day reforms were legislated and implemented. The reforms were set out in country information which the Tribunal quoted and referred to.
15. The Tribunal found that the applicant received normal secondary education. The Tribunal considered that there was no evidence that decisions made by the Courts in respect of the applicant's case about his expulsion from the Latvian State University were influenced by any Convention ground.

16. The Tribunal found that on the basis of the Latvian authorities registration of the husband's lengthy residence at one address in Latvia, his unhindered entry and exit to and from that country and the extension of his USSR passport in 1997, he would not be subject to deportation if he returned to Latvia. The husband had travelled in and out of Latvia on a number of occasions, including one previous visit to Australia.
17. The Tribunal said there was no evidence that Latvian citizens or residents of Jewish extraction were subject to unlawful tampering of the database at the Latvian Immigration Department, as the applicant claimed.
18. The Tribunal did not accept that the husband had not worked after 1985. It found that he worked as a trader. His extensive travelling was evidence of this. There was no evidence that the husband was prevented from earning a living for himself and his family as a trader.
19. The Tribunal considered that independent country information showed that the Latvian government generally respected human rights and had taken appropriate action against people engaged in anti-Semitic activities. None of the available country information suggested that Latvian authorities conducted racial or religious discrimination. The provisions of the law against such abuses were enforced

## **The applicant's arguments**

### **Fairness**

20. The husband claimed that the Tribunal did not give him a fair hearing. The applicants' contentions of fact and law dated 1 July 2005 say:
  1. *At the very beginning of the hearing the RRT Member informed me about my right to say anything I wish to say in order to support my case and that I can do so at the end of hearing. According to the tape recording I was not given an opportunity to do so at the end of hearing.*
  2. *During the hearing I was interrupted by the RRT Member on many occasions.*

3. *On several occasions the RRT Member did not listen to the translation and did not give time for the translator to translate.*

4. *On one occasion the RRT Member made an inappropriate remark in relation to the evidence given by me at that time.*

5. *On many occasions throughout the hearing the RRT Member demanded from me to make the given evidence shorter and several times remarked that the hearing is going slowly.*

6. *The RRT Member, while I was still talking to her, unexpectedly stood up and closed the hearing with the remark, "Why not drive a taxi in Latvia?" This remark has an insulting nature.*

21. The husband referred to pages 13 and 14 of the transcript of hearing as an example of what he complained about. At page 12, the husband was giving some fairly long and detailed evidence about what happened to him when he was at school. The Tribunal member asked him "Mr, are we going through every year of your school?".
22. The husband responded that he was going through all "this anti-Semitic moments during my school years". He gave some more detail and was interrupted by the migration agent representing him, counselling him about the procedure and saying it was possibly better at this stage to answer the specific questions of the Tribunal.
23. At page 13, the Tribunal member said she was sorry he had to be interrupted but it was a long way in the past. The Tribunal member asked the husband to move into his adult years. The member said the hearing normally only lasted a couple of hours and asked the interpreter how long he was booked for. The interpreter responded three hours.
24. The agent then said to the husband (at page 14) that the historical persecution or discrimination of the husband as a Jewish person in Latvia is important, but not as important as more recent events which is what needs to be focused on.
25. The husband said that if you don't know how my life actually was, you won't be able to understand the real perspective. The Tribunal member then said that a lot has changed in Latvia since the last 20 years "and that is the reason why we focus on whether there is a real chance you

will suffer persecution for a Convention reason if you return to Latvia now”.

26. Another example given by the husband is at page 28. At page 26 and 27, the husband gives a long explanation about his and his mother's eviction from their flat and his attempt to obtain redress, including writing letters to newspapers and magazines. At page 28 the Tribunal member asked were any of the letters ever published. The husband replied “I’ll explain what happened”. The Tribunal member said “No I want to know whether any of these letters were ever published” and the husband replied no. The husband then went on to say more and the Tribunal member insisted on moving on to something else, and asked whether they moved into new accommodation.
27. The passages of transcript referred to, and others, show that the husband gave many long answers, not necessarily to the point. Both the Tribunal member and the applicants’ representative needed to remind the husband of what was relevant to the hearing. The occasions when the husband was interrupted do not show any unfairness, but rather the Tribunal member controlling the hearing in an attempt to have the husband give evidence about what was relevant.
28. A separate complaint is about what occurred at the end of the hearing, and that the husband was not given the opportunity, at the end of the hearing, to say what he wanted to say.
29. At the commencement of the hearing the Tribunal member described the procedure. She said she would be asking questions and at the end of the hearing, the husband could make any further comments if he wished to do so.
30. During the latter part of the hearing the Tribunal member put to the husband several pieces of country information. The husband gave a number of long explanations and answers.



At pages 56 and 57 of the transcript this occurred:

*MEMBER: Okay. We must close now. I did ask you not to keep telling me the same things because it takes much longer, and we do have in writing the problem about the grave, and you tell me you've got a fax from your sister about it, and I accept that your sister went there and found that there are was a problem. But we're now going to close---*

*INTERPRETER: I would like to tell you the last thing.*

*MEMBER: No. You can write to me.*

*INTERPRETER: Only one sentence. I don't want to go back to Latvia. I need the protection of that country.*

*MEMBER: Why don't you drive a taxi in Latvia if you drive one in Australia.*

*INTERPRETER: It's a different story.*

*MEMBER: Okay.*

*INTERPRETER: I have been living here for five years. I was never persecuted here.*

31. The Tribunal member then said that the hearing was closing. The husband attempted to keep talking. The Tribunal member and the applicant's representative had a discussion about return of original documents. The hearing was then closed at 5:50 p.m.
32. The Tribunal then sent to the applicant two letters pursuant to s.424 and s.424A of the *Migration Act 1958* (Cth). The first asked for information about a number of specific things. They concerned travel, business, employment, the method of financing apparently extensive travel from 1985 to 1997, visits to countries which are signatories to the Convention and employment.
33. The letter under s.424A refers to information the Tribunal had and invited comment. The letter is extensive and refers to many, if not all the significant matters that the husband relied upon in claiming that he had a well founded fear of persecution for a Convention reason.

34. The husband replied in writing, obtaining an extension of time from the Tribunal to do so. The reply was extensive.
35. There is no basis for saying that the husband was prevented from putting his case to the Tribunal. He gave a great deal of detail in his answers at the Tribunal hearing. When the Tribunal closed the hearing, the husband had given evidence about all the elements of his claim. He was then given the opportunity to comment further. The letter pursuant to s.424A, in particular, gave the husband the opportunity to respond to what the Tribunal saw as difficulties with most, if not all, the husband's major claims. If the husband had not had an opportunity to say all he wanted to say at the hearing, he was given that opportunity to do so after the hearing.
36. The Tribunal's reference to driving a taxi was perhaps a reaction to the husband continuing to speak when the Tribunal member was wanting to close the hearing. It does not show bias on the Tribunal's part. The husband was given adequate opportunity to put his claims, both at the hearing and subsequently in writing.

### **Claims of factual errors**

37. The husband's contentions claim a number of errors in the decision.
38. The husband claimed that the Tribunal, in treating his expulsion from the University and Conservatorium as something in the past, did not deal with them properly. He claimed that he still carried the burden of the negative consequences of the illegal actions. The complaint about the Tribunal's decision is a complaint about the Tribunal's finding of fact. The Tribunal found any discrimination against the husband in education was in the past and not something that would affect him in terms of persecution for a Convention reason. There is no jurisdictional error. If the complaint is that the issue was not dealt with by the Tribunal, then the complaint is wrong. The issue was dealt with. If the complaint is that the Tribunal was wrong in its finding, then that is a complaint about the fact finding process, not jurisdictional error.
39. The Tribunal did not accept the husband's claim that any violation of his rights as a tenant was because he was Jewish. It found that the landlord was attempting to obtain an economic advantage. It found

that the Latvian authorities were willing and able to provide effective protection to the applicant in respect of the dispute with his landlord. The contentions claim that this finding is wrong. It is a finding of fact and cannot be the basis for a claim of jurisdictional error.

40. The contentions claim that the Tribunal's decision does not take into account that the date of this arrival in Latvia of 5 March 1993 recorded on documents in relation to privatisation certificates were not entered by the husband or in his presence. The Tribunal dealt with this claim. It referred to the husband's USSR passport. Stated on the passport is that the husband was born, educated and employed in Latvia, and resided at the same address in Riga since 1956. The Tribunal said the documents with the arrival date of 5 March 1993 were to open an account for privatisation vouchers, not a citizenship record. The Tribunal dealt with the issue. The complaint goes only to matters of fact, and does not raise any question of jurisdictional error.
41. The contentions claim that the decision ignores all the evidence on documents which confirmed the total absence of any Court protection for the husband in Latvia. The claim is not correct. The Tribunal's decision refers extensively to country information and the availability of the protection by the Latvia authorities, including courts.
42. The contentions claim that the decision ignores the husband's unwillingness to become a citizen of Latvia. At the hearing, he produced what he said was a copy of the Latvian citizenship law. He claimed that he did not qualify. Even if this is correct, it shows no jurisdictional error by the Tribunal. Questions of foreign law which might arise in the course of the Tribunal's assessment of evidence are questions of fact; *Singh v The Minister for Immigration & Multicultural Affairs* (No 2) [2001] FCA 327 at [22]. The husband can have no complaint if the Tribunal did not consider the particular document he produced at the Court hearing. He had ample opportunity, particularly in response to the s.424A letter to produce evidence of Latvian citizenship law.
43. The contentions claim that the Tribunal's decision, based in part on several trips to visit relatives overseas, concluded that the husband was a successful businessman. The contentions claim that the decision ignores the documents submitted to the Tribunal from clients which

show that in reality, he was working as a lawyer in Latvia. This is a claim of an error in the fact finding process, not an allegation of jurisdictional error.

44. The Tribunal describes a document introduced by the husband as "self-serving". The contentions criticise this finding. It is a criticism of the fact finding process, not an allegation of jurisdictional error.
45. None of the arguments put forward on behalf of the applicant's show jurisdictional error.

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**I certify that the preceding Forty-five (45) paragraphs are a true copy of the reasons for judgment of Phipps FM**

Associate: Sherryn Kwong

Date: 24 January 2006