

FEDERAL COURT OF AUSTRALIA

SZKJZ v Minister for Immigration and Citizenship [2007] FCA 1897

CITIZENSHIP AND MIGRATION – migration – review of decisions – Refugee Review Tribunal – conduct of review – assessment of applicant’s credibility by video link generally unsatisfactory – need for provision of trained interpreters

**SZKJZ AND SZKKA v MINISTER FOR IMMIGRATION AND CITIZENSHIP AND
REFUGEE REVIEW TRIBUNAL
NSD 1453 OF 2007**

**MADGWICK J
14 NOVEMBER 2007
SYDNEY**

GENERAL DISTRIBUTION

**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY**

NSD 1453 OF 2007

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

**BETWEEN: SZKJZ
 First Appellant**

**SZKKA
 Second Appellant**

**AND: MINISTER FOR IMMIGRATION AND CITIZENSHIP
 First Respondent**

**REFUGEE REVIEW TRIBUNAL
 Second Respondent**

JUDGE: MADGWICK J

DATE OF ORDER: 14 NOVEMBER 2007

WHERE MADE: SYDNEY

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The appellant is to pay the costs of the first respondent assessed in the sum of \$2,000.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY**

NSD 1453 OF 2007

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

**BETWEEN: SZKJZ
 First Appellant**

**SZKKA
 Second Appellant**

**AND: MINISTER FOR IMMIGRATION AND CITIZENSHIP
 First Respondent**

**REFUGEE REVIEW TRIBUNAL
 Second Respondent**

JUDGE: MADGWICK J

DATE: 14 NOVEMBER 2007

PLACE: SYDNEY

REASONS FOR JUDGMENT

1 This is an appeal from a judgment of the Federal Magistrates Court given by Cameron FM. His Honour dismissed an application for judicial review of a decision of the Refugee Review Tribunal (“the Tribunal”) which is adverse to the appellants.

2 The first appellant (“the appellant”), a Hindu in a predominantly Hindu state, claims to fear persecution from Muslim groups because of his Hinduism and activities in support of it. The second appellant is the wife of the appellant, and relies on her membership of the family unit in making her claim. The appellant claims that in February of 2002 he was on a train set on fire by Muslim fundamentalists and was present when riots broke out between Hindus and Muslims. His shop in Gujarat was looted and set on fire and he was later threatened. He claims he did not receive any protection from the police despite reporting the threats and his fears.

3 The grounds of appeal suggest that, first, the Tribunal made a jurisdictional error when adopting an approach to the meaning of well-founded fear which was “harsh”, which

“failed to assess the cumulative effects of separate incidents” and did not count the appellant’s past persecution as constituting a real chance of future harm. Second, it is said that the Tribunal did not properly consider all the circumstances of the appellant in relation to the matter of effective state protection and failed to inquire if such protection would be meaningful in respect of the appellant. Thirdly, the Tribunal erred in failing to look at the practicality of the appellant’s ability to relocate in India.

4 No actual error was pointed to on the part of the learned Federal Magistrate in respect of any of these matters and in my opinion he was correct for the reasons he gave.

5 In written submissions the appellant added comments on two other matters. The first may be dismissed as not sounding in jurisdictional error, namely a suggestion that the Tribunal member based his decision on “old and one sided country information”. That deals with the merits of the Tribunal’s decision entirely and cannot give rise to a ground for a judicial review.

6 The second matter to which the appellant refers is that he says there were difficulties with the interpreter provided for him. He speaks the Gujarati language and it seems that he had a Gujarati interpreter. However, he was in Griffith and the Tribunal was conducting an inquiry, of which his credibility was a central feature, by video link. This is very unsatisfactory in refugee cases, when so much is at stake and money ought certainly be found to enable Tribunal members to travel to country areas where there is a concentration of applicants.

7 The complaint about the interpreter was raised before the learned Federal Magistrate. His Honour pointed out that the Tribunal member appeared to have been sensitive to possible interpretation problems and that he had invited the appellant to express any concerns that he had in relation to such an issue but the appellant has expressed no such concerns. The appellant told me that he forgot to do so.

8 There is actually no evidence of any difficulty with the interpretation. Such preliminary inquiries as I have been able to make indicate that it is extremely unlikely that any useful evidence could be put forward about this and I do not propose to examine the matter further.

9 On the basis of what was put before the Federal Magistrate his Honour was right for the reasons he gave.

10 In Sydney, where I am hearing this appeal, a young man, an accounting student, is acting as an untrained interpreter for the appellant. The interpreter is an intelligent and conscientious person and his knowledge of English is not in doubt, nor is his knowledge of Gujarati, but he has not been trained in interpretation. This is also unsatisfactory in this Court on an appeal.

11 I do not know how well trained people who act as Gujarati interpreters in Griffith are. It appears that a number of Gujarati people have been brought into Australia as labour to assist primary industry in the Griffith area. I am told that steps are in hand, or have been in hand, to properly train some Gujarati interpreters in that area, among other things for the sake of assisting both the Minister's departmental delegates and the Tribunal.

12 It nevertheless seems likely that there will be, in some cases, some interpretation problems. All the more reason why, in my opinion, hearing these matters by video link is unsatisfactory. It is not beyond the bounds of possibility that in some cases it could amount to a jurisdictional error to deprive an applicant of the opportunity to give *viva voce* evidence. However I am not satisfied that there has been any effective denial of the appellant's rights in the present case.

13 The appeal will be dismissed with costs, assessed in the sum of \$2,000.

14 I will direct that these reasons be forwarded to the Minister for his/her personal attention and also to the President of the Tribunal.

I certify that the preceding fourteen (14) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Madgwick.

Associate:

Dated: 30 November 2007

The Appellant appeared in person.

Counsel for the Respondent: T Jowett

Solicitor for the Respondent: Blake Dawson

Date of Hearing: 14 November 2007

Date of Judgment: 14 November 2007