FEDERAL COURT OF AUSTRALIA

SZVJU v Minister for Immigration and Border Protection [2017] FCA 489

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| Appeal from: | *SZVJU v Minister for Immigration and Border Protection* [2016] FCCA 3110 |
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| File number: | NSD 2095 of 2016 |
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| Judge: | **TRACEY J** |
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| Date of judgment: | 10 May 2017 |
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| Date of publication of reasons: | 15 May 2017 |
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| Catchwords: | **MIGRATION** – appeal from a decision of the Federal Circuit Court – whether the Court erred in dismissing an application for judicial review of a decision of the Refugee Review Tribunal – where the Tribunal affirmed a decision of the Minister’s delegate to refuse to grant Protection (Class XA) visas – where the Tribunal made adverse credibility findings |
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| Legislation: | *Migration Act 1958* (Cth) ss 36(2)(a), 36(2)(aa), 36(2)(c) |
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| Cases cited: | *SZGIZ v Minister for Immigration and* Citizenship (2013) 212 FCR 235; [2013] FCAFC 71  *SZVJU v Minister for Immigration and Border Protection* [2016] FCCA 3110 |
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| Date of hearing: | 10 May 2017 |
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| Registry: |  |
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| Division: |  |
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| National Practice Area: |  |
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| Category: | Catchwords |
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| Number of paragraphs: | 18 |
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| Counsel for the First and Second Appellants: | The First and Second Appellants appeared in person with the assistance of an interpreter |
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| Counsel for the First Respondent: | Mr MJ Smith |
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| Solicitor for the First Respondent: | DLA Piper Australia |
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| Counsel for the Second Respondent: | The Second Respondent filed a submitting notice, save as to costs |

ORDERS

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|  | | NSD 2095 of 2016 |
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| BETWEEN: | SZVJU  First Appellant  SZVJV  Second Appellant | |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTION  First Respondent  ADMINISTRATIVE APPEALS TRIBUNAL  Second Respondent | |

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| JUDGE: | TRACEY J |
| DATE OF ORDER: | 10 MAY 2017 |

THE COURT ORDERS THAT:

1. The appeals be dismissed.
2. The appellants pay the first respondent’s costs of the appeal.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

TRACEY J:

1. This is an appeal from the Federal Circuit Court (“the FCC”): see *SZVJU v Minister for Immigration and Border Protection* [2016] FCCA 3110. The FCC dismissed an application for judicial review of a decision of the Refugee Review Tribunal (“the Tribunal”) (now the Administrative Appeals Tribunal) in which it had affirmed a decision of a delegate of the Minister not to grant the appellants’ Protection (Class XA) visas.
2. The first and second appellants, who are Chinese citizens, entered Australia in 2002 and 2007 respectively. Following their arrivals, each made applications for protection visas. SZVJU claimed to fear persecution in China because he was a Falun Gong practitioner. SZVJVclaimed to fear persecution because she was a Christian. Each application was refused. The refusals were affirmed by the former Tribunal.
3. Each application had been made under s 36(2)(a) of the *Migration Act 1958* (Cth) (“the Act”). This paragraph incorporated the criteria, prescribed by the Refugees Convention as amended by the Refugees Protocol, for establishing refugee status.
4. On 24 March 2012, amendments to the Act came into force. They introduced a new s 36(2)(aa) which added a criterion (“the complementary protection criterion”) for the granting of protection visas.
5. On 24 February 2014, the appellants reapplied for protection visas. SZVJU did so pursuant to s 36(2)(aa) on the basis that he feared harm on return to China because of a dispute relating to compensation for a house which he claimed to own and which had been demolished in order that a road might be built. SZVJV made her application under s 36(2)(c) as a member of the same family unit as SZVJU but made no separate protection claims of her own. They were able to make this second application consistently with the decision of a Full Court of this Court in *SZGIZ v Minister for Immigration and Citizenship* (2013) 212 FCR 235; [2013] FCAFC 71. The Court there held that a former unsuccessful protection visa applicant could make a second valid application, provided that application was based on a different criterion from that on which the original application had been made.
6. A delegate of the Minister refused the new applications. The appellants sought review of those decisions in the Tribunal. The Tribunal affirmed the delegate’s decisions.
7. The appellants then sought judicial review in the FCC. The application relied on three grounds. It was contended that the Tribunal’s decision:

* was affected by procedural unfairness;
* gave rise to an apprehension of bias; and
* failed to take into account relevant considerations.

None of these grounds was particularised. Additional complaints of legal error were made in written and oral submissions before the FCC.

1. The FCC found that no jurisdictional error had been made by the Tribunal. It dismissed the appellants’ application.
2. It is not necessary to summarise the FCC’s reasons for refusing the appellants’ application. This is because the grounds contained in the appellants’ notice of appeal in this Court do not, in terms, challenge any of the material findings made by the FCC.
3. The appellants’ notice of appeal contains six grounds. They are:

1. The … [Minister and the Tribunal] have not taken all the relevant information into consideration of the second protection visa [sic].

2. The … [Minister and the Tribunal] have not been aware [that] the activities taken by the applicant in Australia will pose the [sic] serious harm to the applicants if they return to their country.

3. The applicants have [sic] well founded fear existed to prevent them going back to their country, that the … [Minister and the Tribunal] should look at. During the whole course of the hearing, it was not mentioned by the respondents.

4. The applicants were not treated fairly in the assessment of their protection visa.

5. The … [FCC] did not understand the explanation made by the applicants and made the judgement personally.

6. The … [Minister, the Tribunal and the FCC] did not give the applicants the opportunities to make themselves clear, and these respondents have questioned the applicants’ credibility based on their submission, which is unfair to the applicants.

1. No particulars were provided by way of elaboration of these grounds. No written submissions were filed by the appellants.
2. The appellants appeared in person at the hearing of their appeal. They had the assistance of an interpreter.
3. SZVJVmade submissions on behalf of both appellants. She said that the Department and the Tribunal had treated them unfairly; the assessments of their claims had been very brief and the hearing before the Tribunal was also brief. Their honesty had been questioned and they had formed the view that no matter what they said, they would not be believed. They complained that the Tribunal had not considered the complementary protection criterion for the granting of a protection visa and had not given full consideration to their case.
4. I am conscious that the appellants are not legally represented and are unfamiliar with the Australian legal system. I sought to explain to them that the FCC had a limited judicial review jurisdiction which prevented it from undertaking a further assessment of their claims.
5. I am prepared to assume, in the appellants’ favour, that their complaints, made orally today, are covered by their grounds of appeal. I am further prepared to assume, in their favour, that, where possible, the grounds can be construed as a complaint that the FCC should have but did not find jurisdictional error on the part of the Tribunal.
6. It was for the appellants to persuade the Tribunal that the first appellant satisfied the complementary protection criterion, and that the second appellant was thus eligible for a protection visa as a member his family unit. At the Tribunal hearing, the appellants had the opportunity to explain all the facts on which their claims were based. It is clear from the Tribunal’s reasons that it considered the appellants’ claims. It accepted some of them but rejected others because of inconsistencies which it identified. The Tribunal’s reasons also demonstrate that it had regard to, and accepted some of, the explanations given for certain inconsistencies, and gave notice of the possibility that it would make adverse credibility findings. The Tribunal’s findings were open to it and were not challenged in the grounds of review relied on in the FCC, although oral submissions were made to this effect.
7. I have carefully examined the reasons for decision of the Tribunal and the FCC. The FCC’s reasons disclose no appealable error.
8. The appeal must be dismissed with costs.

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| I certify that the preceding eighteen (18) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Tracey. |

Associate:

Dated: 15 May 2017