FEDERAL COURT OF AUSTRALIA

MZACJ v Minister for Immigration and Border Protection [2015] FCA 839

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| Citation: | MZACJ v Minister for Immigration and Border Protection [2015] FCA 839 |
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| Appeal from: | MZACJ & Anor v Minister for Immigration & Anor [2015] FCCA 856 |
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| Parties: | **MZACJ and MZACK v MINISTER FOR IMMIGRATION AND BORDER PROTECTION and REFUGEE REVIEW TRIBUNAL** |
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| File number: | VID 157 of 2015 |
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| Judge: | **TRACEY J** |
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| Date of judgment: | 12 August 2015 |
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| Catchwords: | **MIGRATION** – appeal from the Federal Circuit Court of Australia – judicial review of a decision to refuse a Protection (Class XA) visa – leave sought to rely on additional ground not argued in the Federal Circuit Court |
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| Legislation: | *Migration Act 1958* (Cth), ss 424(3)(a), 424A |
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| Cases cited: | *SZUDS v Minister for Immigration and Border Protection* [2015] FCA 502 |
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| Date of hearing: | 12 August 2015 |
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| Place: | Melbourne |
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| Division: | GENERAL DIVISION |
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| Category: | Catchwords |
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| Number of paragraphs: | 18 |
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| Counsel for the Appellants: | The First Appellant appeared in person and on behalf of the Second Appellant with the assistance of an interpreter |
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| Solicitor for the First Respondent: | Ms J Lucas of the Australian Government Solicitor |
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| Counsel for the Second Respondent: | The Second Respondent entered a submitting appearance save as to costs |

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| VICTORIA DISTRICT REGISTRY |  |
| GENERAL DIVISION | VID 157 of 2015 |

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| ON APPEAL FROM THE FEDERAL CIRCUIT COURT OF AUSTRALIA |

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| BETWEEN: | MZACJ  First Appellant  MZACK  Second Appellant |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTION  First Respondent  REFUGEE REVIEW TRIBUNAL  Second Respondent |

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| JUDGE: | TRACEY J |
| DATE OF ORDER: | 12 AUGUST 2015 |
| WHERE MADE: | MELBOURNE |

THE COURT ORDERS THAT:

1. The appeals be dismissed with costs.

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

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| VICTORIA DISTRICT REGISTRY |  |
| GENERAL DIVISION | VID 157 of 2015 |

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| ON APPEAL FROM THE FEDERAL CIRCUIT COURT OF AUSTRALIA |

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| BETWEEN: | MZACJ  First Appellant  MZACK  Second Appellant |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTION  First Respondent  REFUGEE REVIEW TRIBUNAL  Second Respondent |

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| JUDGE: | TRACEY J |
| DATE: | 12 AUGUST 2015 |
| PLACE: | MELBOURNE |

**REASONS FOR JUDGMENT**

1. There are two appellants, a husband and a wife. Both appellants are citizens of India. The appellants entered Australia on 12 December 2012 as holders of Class TR, Subclass 676 Tourist visas. On 24 January 2013, the appellants applied for a Protection (Class XA) visa. They said that they feared that they would be killed if they returned to India.
2. The first appellant claimed that, on 29 August 2011, a family member was stabbed by the victim’s first cousin. He claimed that he was called to the scene and that he transported the injured family member to the hospital. He claimed that as a consequence of his involvement he became a witness to the incident and became a target of the offender.
3. The first appellant claimed that the offender had threatened to kill him and his family. He claimed that the offender was known for his criminal activities, had a strong political background with links to the Bharatiya Janata Party and was backed by the local police and political members. He claimed that the offender had tried to bribe him not to testify about the incident. He said that, after seeking assistance from the police, he was physically and verbally assaulted by the offender and his gang.
4. He said that it became impossible for him to live in India with his wife and children and that a friend had recommended that he go to Australia.
5. The application was refused by a delegate of the Minister.
6. The appellants appealed to the Refugee Review Tribunal (“the Tribunal”).
7. The Tribunal found that criminal greed and corruption, rather than any Convention grounds, were the essential and significant reasons for the claimed threats against the appellants. The Tribunal was not satisfied that the threat posed by the offender gave rise to a real chance of harm capable of amounting to persecution or to a real risk of significant harm. The Tribunal went on to consider whether, even if the first appellant faced a real risk of significant harm, the appellants could, if necessary, relocate within India to avoid the harm feared. It found that they could. The Tribunal affirmed the decision of the delegate.
8. The appellants sought judicial review of the Tribunal’s decision in the Federal Circuit Court. The appellants relied on the following grounds of review:

“1. I applied for the visa to department of immigration which was refused.

2. Then I apply to RRT for review of that decision.

3. I think RRT and department of immigration did not look [at] my situation.”

1. The trial judge considered that the appellant sought impermissible merits review. Insofar as the first appellant said that the RRT did not look at his situation, the trial judge found that “the tribunal, in fact, looked at the claims extensively” and “set out accurately the applicant’s claims and analysed them in considerable detail”. The trial judge concluded that given the Tribunal’s finding in relation to relocation, even if other issues existed in respect of the Tribunal’s decision, the ultimate conclusion was sustainable. The application was rejected.
2. The appellants now appeal to this Court against the Federal Circuit Court’s decision. The appellants have sought leave to rely on a ground for review of the decision of the Tribunal which was not argued in the Federal Circuit Court. They have not sought to rely on any of the grounds which they advanced in that Court. The appellants’ notice of appeal sets out the following ground of appeal:

“1. The FM failed to find that the tribunal’s decision was in breach of s. 424A of the Migration Act 1958 (Cth) and therefore fall under jurisdictional error.

(a) There was certain adverse information used by the Tribunal to affirm the decision under review and the Tribunal did not disclose the information in accordance with s 424A(1).”

1. The appellants did not identify the adverse information allegedly used by the Tribunal to affirm its decision.
2. The Minister in his written submissions opposed leave to argue a new ground of appeal on the basis that it is “not expedient in the interests of justice…as the proposed ground of appeal does not contain merit”. The Minister submitted that the only evidence to which the Tribunal had regard in arriving at its conclusions, other than the evidence provided to it by the appellants, was country information concerning the population of the appellants’ home region in India. Country information falls within the exception in s 424(3)(a): see *SZUDS v Minister for Immigration and Border Protection* [2015] FCA 502 at [14] (Jagot J).
3. MZACJ appeared in person to argue his appeal and that of his wife. His wife did not attend. He had the assistance of an interpreter.
4. When invited to elaborate on their complaint that the Tribunal had contravened s 424A of the *Migration Act 1958* (Cth), MZACJ said that he had not drafted this ground. He said that this had been done for the appellants by “a friend” who was not a lawyer. His real complaint was that he required more documents to support the case he wished to make to the Tribunal. He had asked the Tribunal for more time but the Tribunal had refused to accord it.
5. As counsel for the Minister pointed out, there is nothing in the Tribunal record to suggest that any such request for more time to adduce documentary evidence was ever made to the Tribunal.
6. More significantly, no such issue was raised before the trial judge.
7. The appellants have failed to identify any appellable error made by the Federal Circuit Court.
8. The appeals 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: 12 August 2015