FEDERAL COURT OF AUSTRALIA

DZAFH v Minister for Immigration and Border Protection [2017] FCA 984

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| Appeal from: | *DZAFH v Minister for Immigration & Anor* [2017] FCCA 387 |
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| File number(s): | NTD 12 of 2017 |
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| Judge(s): | **DAVIES J** |
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| Date of judgment: | 18 August 2017 |
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| Catchwords: | **MIGRATION** – visa application denied by Minister’s delegate, and application for review of decision by Refugee Review Tribunal not properly received – whether Refugee Review Tribunal and Federal Circuit Court of Australia right to hold that application was not received within time – whether Refugee Review Tribunal and Federal Circuit Court of Australia right to hold that application was not received in the prescribed form |
| Legislation: | *Migration Act 1958* (Cth)  *Migration Regulations 1994* (Cth) |
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| Cases cited: | *SZULH v Minister for Immigration and Border Protection* [2015] FCA 835 |
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| Date of hearing: | 18 August 2017 |
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| Registry: |  |
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| Division: |  |
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| National Practice Area: | Administrative and Constitutional Law and Human Rights |
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| Category: | Catchwords |
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| Number of paragraphs: | 6 |
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| Counsel for the Appellant: | The Appellant appeared in person with the assistance of an interpreter |
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| Solicitor for the First Respondent: | Mr D Brown of the Australian Government Solicitor |

ORDERS

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|  | | NTD 12 of 2017 |
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| BETWEEN: | DZAFH  Appellant | |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTION  First Respondent  ADMINISTRATIVE APPEALS TRIBUNAL  Second Respondent | |

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| JUDGE: | DAVIES J |
| DATE OF ORDER: | 18 August 2017 |

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The Appellant pay the First Respondent’s costs fixed in the amount of $3,000.00.

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

REASONS FOR JUDGMENT

DAVIES J:

1. The appellant has appealed the decision of the Federal Circuit Court of Australia (“**FCC**”) dismissing his application for judicial review of a decision of the Refugee Review Tribunal (as it then was) (“**the Tribunal**”). The appellant had applied to the Tribunal for review of the decision of a delegate of the first respondent to refuse to grant the appellant a protection visa under s 65 of the *Migration Act 1958* (Cth) (“**the Act**”). The Tribunal held that it had no jurisdiction to review the delegate’s decision as the application for review was not given to the Tribunal within the time prescribed by s 412(1) of the Act.
2. The appellant’s visa application was refused by the delegate on 10 November 2014. The appellant, who was in detention at Villawood Detention Centre at Sydney at the time, was notified of the decision and provided with a copy of the delegate’s decision record on the same day. Pursuant to s 412(1)(b) of the Act and reg. 4.31 of the *Migration Regulations 1994* (Cth) (“**the** **Regulations**”), the time for lodgement of an application for review of the delegate’s decision was seven working days commencing on the day the appellant was notified of the delegate’s decision. The appellant prepared an application for review using a pre-printed approved form on 17 November 2014 which he gave to a welfare officer at the detention centre asking her to fax the application for review to the Tribunal registry in New South Wales. On 19 November 2014 the Tribunal received a fax containing only the two pages of the letter of notification relating to the decision to refuse to grant the appellant a protection visa.
3. On 2 January 2015 the Tribunal made a decision that it did not have jurisdiction to hear and determine the appellant’s application for review. On the Tribunal’s calculation, the appellant had until 19 November 2014 in which to lodge the application for review, but as the only documents that the Tribunal received that day by fax were the two pages of the letter of notification relating to the decision to refuse to grant the appellant a protection visa, the Tribunal held that an application for review the approved form had not been given to the Tribunal within the time prescribed by s 412 of the Act and reg. 4.31 of the Regulations.
4. The appellant applied to the FCC for judicial review of the Tribunal’s decision. The FCC held that the Tribunal erred in finding that 19 November 2014 was the last day of the relevant period in which to make an application for review and that the last day was in fact 18 November 2014, being the seventh working day commencing on the day when the appellant received notification of the delegate’s decision, namely 10 November 2014. The FCC held that the appellant’s application was accordingly out of time as the fax was not transmitted to the Tribunal until 19 November 2014.
5. The FCC was correct to hold that the seventh working day commencing on the day when the appellant received notification of the delegate’s decision was 18 November 2014 and that as an application was not lodged with the Tribunal within the requisite time, the Tribunal had no jurisdiction to review the delegate’s decision. It is well established that an application that is not given to the Tribunal within the requisite period prescribed by s 412(1)(b) of the Act and regulation 4.31 of the *Migration Regulations* is not valid and the Tribunal has no jurisdiction to review an application given out of time: the authority is *SZULH v Minister for Immigration and Border Protection* [2015] FCA 835 and the cases cited at [17].
6. As none of the other grounds of appeal raise any appealable error, the appeal must be dismissed.

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| I certify that the preceding six (6) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Davies. |

Associate:

Dated: 25 August 2017