FEDERAL COURT OF AUSTRALIA

SZTLA v Minister for Immigration and Border Protection [2015] FCA 515

|  |  |
| --- | --- |
| Citation: | SZTLA v Minister for Immigration and Border Protection [2015] FCA 515 |
|  |  |
| Appeal from: | SZTLA & Ors v Minister for Immigration & Anor [2015] FCCA 540 |
|  |  |
| Parties: | **SZTLA, SZTLB and SZTLC v MINISTER FOR IMMIGRATION AND BORDER PROTECTION and REFUGEE REVIEW TRIBUNAL** |
|  |  |
| File number: | NSD 190 of 2015 |
|  |  |
| Judge: | **COLLIER J** |
|  |  |
| Date of judgment: | 26 May 2015 |
|  |  |
| Legislation: | *Federal Court of Australia Act 1976* (Cth) s 24(1)(a)*Migration Act 1958* (Cth) s 476*Federal Circuit Court Rules 2001* (Cth) r 44.12(1)(a) |
|  |  |
| Date of hearing: | 26 May 2015 |
|  |  |
| Place: | Sydney |
|  |  |
| Division: | GENERAL DIVISION |
|  |  |
| Category: | No Catchwords |
|  |  |
| Number of paragraphs: | 20 |
|  |  |
| Counsel for the First, Second and Third Appellants: | The First Appellant appeared on behalf of the Second and Third Appellants with the assistance of an interpreter |
|  |  |
| Solicitor for the First Respondent: | Ms R Krishnan of the Australian Government Solicitor |
|  |  |
| Counsel for the Second Respondent: | The Second Respondent entered a submitting appearance |

|  |  |
| --- | --- |
| IN THE FEDERAL COURT OF AUSTRALIA |  |
| QUEENSLAND DISTRICT REGISTRY |  |
| GENERAL DIVISION | NSD 190 of 2015 |

|  |
| --- |
| ON APPEAL FROM THE FEDERAL CIRCUIT COURT OF AUSTRALIA |

|  |  |
| --- | --- |
| BETWEEN: | SZTLAFirst AppellantSZTLBSecond AppellantSZTLCThird Appellant |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTIONFirst RespondentREFUGEE REVIEW TRIBUNALSecond Respondent |

|  |  |
| --- | --- |
| JUDGE: | COLLIER J |
| DATE OF ORDER: | 26 MAY 2015 |
| WHERE MADE: | SYDNEY |

THE COURT ORDERS THAT:

The appeal be dismissed with costs.

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

|  |  |
| --- | --- |
| IN THE FEDERAL COURT OF AUSTRALIA |  |
| QUEENSLAND DISTRICT REGISTRY |  |
| GENERAL DIVISION | NSD 190 of 2015 |

|  |
| --- |
| ON APPEAL FROM THE FEDERAL CIRCUIT COURT OF AUSTRALIA |

|  |  |
| --- | --- |
| BETWEEN: | SZTLAFirst AppellantSZTLBSecond AppellantSZTLCThird Appellant |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTIONFirst RespondentREFUGEE REVIEW TRIBUNALSecond Respondent |

|  |  |
| --- | --- |
| JUDGE: | COLLIER J |
| DATE: | 26 MAY 2015 |
| PLACE: | SYDNEY |

**REASONS FOR JUDGMENT**

1. Before the Court is a notice of appeal from a decision of the Federal Circuit Court of Australia filed by the three appellants in this proceeding, and a notice of objection to the competency of that appeal filed by the Minister. In summary, the appellants seek orders quashing the decision below, the remission of their application to the Refugee Review Tribunal (“Tribunal”) and costs. The Minister objects to the competency of the appeal on the basis that the appellants have sought to appeal from an interlocutory judgment made pursuant to r 44.12(1)(a) of the *Federal Circuit Court Rules 2001* (Cth) (“Federal Circuit Court Rules”), and s 24(1)(a) of the *Federal Court of Australia Act 1976* (Cth) which mandates that an appeal from an interlocutory judgment lies to the Federal Court of Australia only where leave to appeal has been given.
2. Before turning to the process before the Court it is helpful to consider the background facts.

## Background

1. The first and second appellants are citizens of the People’s Republic of China. They came to Australia on student visas in 2007 and 2008 respectively, and have been in a de facto relationship since 2011. The third appellant is their daughter, born in Australia on 8 August 2012. The first and second appellants applied for protection visas on 11 May 2012.
2. A delegate of the Minister refused the application for protection visas on 11 February 2013. On 7 March 2013 the appellants applied to the Refugee Review Tribunal (“Tribunal”) for a review of the delegate’s decision.

## The Tribunal

1. The Tribunal considered the claims of the appellants, which relied on the claim of the first appellant that she was the subject of persecution in China on the basis of her Catholic faith. The second and third appellants had no separate claims to protection. In summary, the first appellant claimed that her family belongs to the Catholic religion, they had secret gatherings for which they were persecuted by the police and that her mother was detained for three months for practising her religious faith until a fine was paid. In particular the Tribunal noted:

The applicant claims there is no religious freedom in China; her parents live in fear. Some police often come to her home to check on her. If she returns to China she will be in danger and will live in fear. She is frightened to return to China and will not give up her Catholic beliefs. If she returns to China she will attend house gatherings and she will be at risk of being caught by the police. She claims she is “also worried that the head of the village will do harm to me. They can give me a charge and send me to the detention centre.” She said that she only recently found out she could apply for refugee status.

1. The Tribunal noted the evidence that the first appellant had attended Catholic Church since arriving in Australia in 2007. A Catholic priest also gave evidence to the Tribunal concerning the family, including that they regularly came to church to celebrate Chinese mass, and that he knew them as genuine Catholic people.
2. The Tribunal examined independent country information concerning Catholics in China, and in particular the province from which the first appellant originated.
3. In summary, the Tribunal found:
* The first appellant was not a credible witness, and the Tribunal did not accept that the first appellant was born into a Catholic family, or that her parents were practising Catholics in China, or that her parents had come to the adverse attention of authorities because of their Catholic faith. The Tribunal formed this view, in particular, because it considered that the first appellant’s evidence about her religious activity and that of her parents was vague and evasive. Further, the first appellant’s evidence was that she had only attended the underground church in China once, and was not baptised until 2007 when she was baptised in a registered church. Her explanations for this were not credible. The Tribunal also considered the first appellant’s evidence about the difference between the registered church and the underground church extremely vague and lacking both internal logic and relevant and persuasive detail.
* The first appellant’s long delay in applying for a protection visa indicated that she did not have a genuine fear of persecution in China. Further, the Tribunal noted that the first appellant had applied to have her student visa extended, and did not accept that she knew of that process but was unaware that she could apply for a protection visa.
* The first appellant’s claim that she would be persecuted by the village headman was vague, brief and lacking relevant or persuasive detail.
* The evidence of the Catholic priest was credible, in that the priest accepted that the first and second appellants were practising Catholics in Australia and attended Church in Australia regularly.
* The country information indicated that the Chinese province of origin of the first appellant was generally tolerant in dealing with unregistered Catholic churches.
* In light of its findings concerning the first appellant and her parents, the Tribunal considered that the chance of harm to the first appellant was remote.
1. Accordingly, the Tribunal affirmed the decision of the delegate of the Minister not to grant the appellants protection visas.

## Federal Circuit Court

1. The appellants sought review of the decision of the Tribunal in the Federal Circuit Court pursuant to s 476 of the *Migration Act 1958* (Cth). The matter was set down for hearing however pursuant to Pt 44 of the Federal Circuit Court Rules – that is, as a show cause hearing. It followed that the primary issue before the Federal Circuit Court was whether the grounds of the application raised an arguable case for the relief sought.
2. The appellants sought review of the Tribunal’s decision on three grounds. His Honour observed that the grounds could really be described as being a narrative seeking to challenge various factual findings of the Tribunal. In summary they were as follows:

1. The Tribunal did not give proper consideration to the nature of religious intolerance in China, and in particular in relation to the practice of the Catholic faith in China.

2. The Tribunal wrongly and unreasonably refused to accept the first appellant’s explanation for her baptism late in life.

3. The Tribunal did not give proper consideration to the risk of serious harm to the first appellant if she returned to China, in particular from the head of the village.

1. The primary Judge rejected these grounds of review. At [10] his Honour said:

The grounds seek that this Court engage in impermissible merits review of the Tribunal’s decision. In that circumstance, they do not raise an arguable case for the relief that the applicants seek.

1. In relation to the Tribunal’s findings and its conclusions as to the first appellant’s lack of credibility, his Honour found that those findings were reasonably open to the Tribunal on the material before it. His Honour continued at [13]:

On any plain reading of the Tribunal’s decision record, the Tribunal gave cogent reasons for its state of disbelief, and provided reasons which were probative of the material before it. The Tribunal’s findings, and its conclusion as to the applicant’s credibility, were all within jurisdiction.

1. In relation to the appellants’ claim that the Tribunal’s decision was not fair, his Honour said at [18]:

It is the case that the applicants before the Tribunal are entitled to a fair hearing and a fair process during the conduct of the review by the Tribunal. However, that does not include, or mean, that they have any entitlement to what they would regard as being the “correct” decision.

1. In particular, his Honour observed that the Tribunal’s findings as to the first appellant’s credit were reasonably open to it on the material before it, and therefore were within jurisdiction.
2. In relation to the country information on which the Tribunal relied, his Honour found that the choice and weight to be accorded to country information is a matter for the Tribunal. To the extent that the appellants sought to challenge those findings, they sought impermissible merits review.
3. His Honour considered that the application to the Court should be dismissed pursuant to r 44.12(1)(a) of the Federal Circuit Court Rules.

## Appeal to this Court

1. In appealing to this Court from the decision of the Federal Circuit Court, the appellants relied on the following grounds:

1. RRT has bias against me as I was deprived of the benefits of doubts.

2. RRT has denied me procedural fairness by failing to provide adequate reasons for the finding of a fact.

3. The Tribunal challenged my baptism time and unreasonably refused my explanation.

4. The Tribunal under evaluated the risk of serious harm that I will face if going back to China.

(Errors in original.)

1. In short, I accept the Minister’s submission that the decision of the Federal Circuit Court is an interlocutory decision, requiring the leave of this Court. I am prepared however to allow leave to appeal, but consider that the grounds of appeal have no merit. This is because:
* The allegation of bias has only been raised in the appeal. In any event, an allegation of bias is a serious matter. There is absolutely nothing in the decision of the Tribunal which would support a finding of bias. A decision which is not in the appellants’ favour does not mean that the Tribunal was biased against them – in this case it simply meant that the Tribunal did not accept that they had substantiated a case for protection under the Migration Act.
* I do not accept that the Tribunal denied the appellants procedural fairness in the manner claimed. Rather, the Tribunal at length explained its reasons for finding facts, including its disbelief of the first appellant’s claims, and the nature of the country information upon which the Tribunal relied.
* While the Tribunal did not accept the first appellant’s reasons for the delay in her baptism, that was an issue of fact for determination by the Tribunal. The Tribunal’s decision was open on the material before it. I do not accept that the decision of the Tribunal in this respect was unreasonable.
* I am satisfied that the Tribunal gave proper and lengthy consideration to the risk of serious harm the first appellant would face on returning to China, both in respect of her practising her Catholic faith and the prospect of threat from the head of her village.
1. The proper order is that the appeal be dismissed with costs.

|  |
| --- |
| I certify that the preceding twenty (20) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Collier. |

Associate:

Dated: 26 May 2015