FEDERAL COURT OF AUSTRALIA

SZVLO v Minister for Immigration and Border Protection [2016] FCA 1592

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| Appeal from: | *SZVLO v Minister for Immigration & Anor* [2016] FCCA 1257 |
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| File number: | NSD 924 of 2016 |
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| Judge: | **DOWSETT J** |
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| Date of judgment: | 1 November 2016 |
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| Catchwords: | **MIGRATION** – protection visa – no basis upon which the primary Judge could have set aside Tribunal’s decision |
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| Date of hearing: | 1 November 2016 |
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| Registry: | New South Wales |
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| Division: | General 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 |
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| Solicitor for the First Respondent: | Mr M Glavac of Clayton Utz |
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| Counsel for the Second Respondent: | The Second Respondent submits to any order of the Court, save as to costs |

ORDERS

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|  | | NSD 924 of 2016 |
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| BETWEEN: | SZVLO  Appellant | |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTION  First Respondent  ADMINISTRATIVE APPEALS TRIBUNAL  Second Respondent | |

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| JUDGE: | DOWSETT J |
| DATE OF ORDER: | 1 NOVEMBER 2016 |

THE COURT ORDERS THAT:

1. the appeal be dismissed; and
2. the appellant pay the first respondent’s costs of the proceeding fixed in the sum of $2,466.10.

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

REASONS FOR JUDGMENT

DOWSETT J:

1. This is an appeal from a decision of the Federal Circuit Court of Australia. The appellant is a citizen of India. He arrived in Australia on 5 May 2013 and, on 1 August 2013, applied for a protection class (XA) visa. He claimed to fear that he would be tortured and killed by the leader of an extremist Hindu group, with whose wife the appellant, a Muslim, had a platonic, extra‑marital relationship. On 4 February 2014 a delegate of the Minister refused to grant the appellant's application, finding that the appellant was not a person who feared persecution for a Convention reason. The delegate also concluded that the appellant was not a person to whom the complementary protection obligations applied.
2. On 4 March 2014 the appellant applied to the second respondent (the “Tribunal”) for review of the delegate's decision. On 8 October 2014 the appellant attended a hearing. On that day the Tribunal affirmed the delegate's decision. The Tribunal did not accept the appellant’s evidence, giving detailed reasons for that conclusion. In particular, his version of events given at the time of his application differed substantially, and in relevant respects from the version given to the Tribunal. On 6 November 2014 the appellant applied to the Federal Circuit Court, seeking judicial review of the Tribunal's decision, raising the following grounds:

(1) I am at shock to know why the Tribunal refused my application.

(2) I do believe that the Tribunal made an error, because the Tribunal misunderstood my claim.

(3) I ask the Honourable Court to assist me in this matter, because I am a Refugee and my life is at risk.

1. The appellant tendered a transcript of the proceedings in the Tribunal and took the primary Judge to various passages. His Honour noted that the grounds of review and the appellant's submissions were "redolent of merits review" and simply indicated disagreement with the Tribunal’s findings. His Honour dismissed the application, finding that the Tribunal's decision was not affected by procedural unfairness or jurisdictional error.
2. In the present appeal, the appellant's ground is simply that the primary Judge misunderstood his claim and made a decision contrary to the evidence before the Tribunal. This ground is based upon a misunderstanding of the nature of the proceedings before the primary Judge. His Honour was not involved in a process in which he was to make any findings, having regard to the evidence, save as may have been incidental to his performing the task of determining whether or not there had been an excess of jurisdiction or a failure to exercise jurisdiction.
3. Before me, the appellant asserted that the misunderstanding to which he referred in his grounds, both at first instance and on appeal, concerned the no doubt troubled relationship between Hindus and Muslims in India. It is not clear to me that any such case was raised by the appellant, or otherwise available on the evidence, either in the Tribunal or before the primary Judge. There were suggestions that the violence which he claims to have suffered at the hands of the husband, to some extent, arose out of hostility between Hindus and Muslims. However the fear of such violence would not constitute persecution for a Convention reason. It would rather be conflict between two persons. The Tribunal was obviously conscious of the possibility that there might, theoretically, be a claim based upon a more general consideration of the relationship between Hindus and Muslims but, as far as I can see the appellant did not take that approach.
4. When I sought to clarify his submission on appeal, he made it clear that the fear which he asserted was of violence from the husband and his associates for reason of his relationship with the woman to whom I have referred. There has been no suggestion, as I understand it, that the authorities would be unable or unwilling to protect him from violence. In my view, the case was never capable of leading to the grant of a protection visa upon the ground of fear of persecution for a Convention reason, although the Tribunal disposed of it on that basis. It may have been a case pursuant to the complementary protection provisions, but the Tribunal also disposed of that case. In effect, it disposed of both cases simply upon the basis that it did not accept the appellant's evidence. I see no basis upon which the primary Judge could have set aside the Tribunal’s decision. It follows that the primary Judge correctly dismissed the application for review. In those circumstances, 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 Dowsett. |

Associate:

Dated: 3 February 2017