



The MRT-RRT Monthly Decisions Bulletin

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This bulletin covers recently published decisions of the Migration Review Tribunal and the Refugee Review Tribunal. The decisions summarised represent a cross-section of published decisions of the Tribunals. Selected summaries of Court judgments, of interest to the Tribunals, are also included.

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MIGRATION REVIEW TRIBUNAL DECISIONS

Business and Skilled visas

061021320

29 August 2007, Melbourne

Ms G Hamilton, Member

SKILLED – DESIGNATED AREA–SPONSORED (MIGRANT) (CLASS BQ) VISA – SUBCLASS 139 - CL.139.217 – SKILLED OCCUPATION – PRIMARY SCHOOL TEACHER – CL.139.215 – AGE REQUIREMENT – The applicants applied for Skilled – Designated Area–Sponsored (Migrant) (Class BQ) visas during May 2004 which were refused by a delegate of the Minister for Immigration and Citizenship in September 2006. The primary criteria for the grant of a Subclass 139 need only be satisfied by one member of the family unit who is an applicant for the visa. The primary visa applicant failed to meet cl.139.215 which required him to be under 45 years of age at the time of application. The primary applicant's spouse (a secondary applicant) was aged 44 years and 9 months at the time of application and accordingly satisfied cl.139.215 of Schedule 2 to the *Migration Regulations* 1994. She was also employed as a technical sales representative and primary school teacher. The delegate refused the visa application on the basis that the primary applicant's spouse was unable to satisfy cl.139.217 at the time of application since she was not employed in a skilled occupation for "a period of, or for periods totalling, at least 12 months in the period of 18 months immediately before the day on which the application was made". Furthermore, cl.139.228 required the applicant's spouse to be under 45 years at the time of decision. The applicants argued before the Tribunal that the primary applicant's spouse had been employed in a skilled occupation for the required period and that they had never been alerted to the age requirement of cl.139.215 despite repeated contact with the Department regarding their application.

Held: Decision under review affirmed

The Tribunal accepted that the primary applicant's spouse satisfied cl.139.217 and that her 9 months teaching experience had been incorrectly excluded. Furthermore, the ASCO description for occupation 2412-11 (primary school teacher) only required a bachelor degree or higher qualification, which she possessed, and not a post-graduate certificate. However, since the primary applicant's spouse was aged over 45 years at the time of decision, cl.139.228 could not be satisfied. Although noting its jurisdictional limitations, the Tribunal considered that the application of cl.139.228(b) may lead to an unfair and unreasonable result such as to possibly warrant Ministerial intervention in the unique and exceptional circumstances of this case.

060939099

30 August 2007, Melbourne

Ms J Ellis, Member

STANDARD BUSINESS SPONSOR – REG. 1.20D – NOT LAWFULLY OPERATING IN AUSTRALIA – The applicant company applied for approval as a standard business sponsor and provided its Australian Company Number (ACN). The delegate of the Minister for Immigration and Citizenship obtained information from the Australian Securities and Investment Commission (ASIC) that indicated that the applicant was deregistered. The delegate was not satisfied that the applicant was actively and lawfully operating in Australia and refused the application on the basis that subregulation 1.20D(2)(a) of the *Migration Regulations* 1994 was not met. The applicant argued before the Tribunal that the company's address had changed and by reason of an oversight had not been notified to ASIC. As a result, notices and correspondence had not been received, the annual return had not been lodged and the company was deregistered without its knowledge. The company continued to operate, including submitting all relevant tax returns and business statements to the Australian Taxation Office. Upon becoming aware of de-registration, the applicant took steps to have the company re-registered but was advised that this required an application to the Supreme or Federal Courts. The applicant had also been advised that the company could be reincorporated under the same name as a more effective and cheaper option, thereby, resulting in a new ACN. The applicant argued that the ACN is not the only or sole proof by which the lawful or active status of the operation of a business is determined.

Held: Decision under review affirmed

The Tribunal found that the applicant did not meet the criteria for approval as a business sponsor under 1.20D(2)(a) since it was not lawfully operating in Australia. The applicant confirmed to the Tribunal that the company had been de-registered and re-registered in the same name. The Tribunal found that the company operated under a new ACN and was a different legal entity from the company that had sought approval as a business sponsor. Furthermore, the applicant for the sponsorship approval was a company that did not exist since it had been de-registered. Accordingly the Tribunal found that the applicant did not meet all the criteria for approval as a business sponsor.

060777567

11 September 2007, Sydney

Mr R Derewlany, Member

EMPLOYER NOMINATION (RESIDENCE) (CLASS BW) – SUBCLASS 856 – CL.856.213(c) – UNLESS EXCEPTIONAL CIRCUMSTANCES APPLY APPLICANT HAS NOT TURNED 45 AND HAS VOCATIONAL ENGLISH – CL.856.221 – APPROVED APPOINTMENT – REGULATION 5.19 APPROVAL OF NOMINATED POSITION AS APPROVED APPOINTMENT – The applicant applied for an Employer Nomination (Residence) (Class BW) visa on the basis that he was nominated by his employer 'Sydney Duty Free' for the position of production manager. The delegate refused to grant the visa because the appointment, in a separate application, was not approved (cl.856.221 of Schedule 2 to the *Migration Regulations 1994*), the visa applicant was over 45 year old and there were no exceptional circumstances to justify waiving the age requirement (cl.856.213(c)(i)). The applicant's nominator successfully sought review of the decision to reject the application for approval of the nominated position under r.5.19(1B) and the Tribunal substituted a decision approving the appointment. The applicant provided further information to the Tribunal regarding life expectancy, working life expectancy, the lack of availability of his skills and details of his experience. The applicant nominator gave evidence that the applicant's skills as a leather garment specialist were unavailable in Australia, that the applicant would contribute significantly to the company, particularly in transferring skills to other staff, and that the applicant's lack of vocational English was not a hindrance to either skills transfer or communication for other purposes, such as Occupational Health and Safety (OH&S) information.

Held: Decision under review set aside

The Tribunal referred to the separate decision approving the appointment of the nominated position, as required by cl.856.213(a). Finding that the appointment had not been withdrawn, was still available to the applicant and that the appointment continued to satisfy the criteria for approval, the Tribunal was satisfied that the applicant met cl.856.221. The Tribunal, finding that the applicant was over 45 years of age at the time of visa application, considered that exceptional circumstances applied. The Tribunal acknowledged the Department's policy guidelines that where an applicant has turned 60, exceptional circumstances are generally not to be considered. However, the Tribunal found the Regulations required consideration of exceptional circumstances and that exceptional circumstances existed in this case based on evidence that the range and combination of skills required for the position were highly specialised, that few people under 45 years of age would have the same level of expertise as the applicant and that the nominator was unable to find a younger suitably qualified person. In terms of productive benefit to Australia, the Tribunal noted that the applicant had worked in the position and a similar position since 1997 and accepted, in the context of increased working life expectancy, that the applicant could continue to contribute to the economy for a number of years. Whilst the applicant conceded that he did not have vocational English, the Tribunal found that he was able to transfer skills to other employees without vocational English, that communication generally and on issues such as OH&S were not hampered. Accordingly the Tribunal found that the applicant met cl.856.213(c)(i) and (ii).

060615807

13 September 2007, Sydney

Ms G Hamilton, Member

BUSINESS SKILLS – ESTABLISHED BUSINESS (RESIDENCE) (CLASS BH) VISA - SUBCLASS 845 - VISA REFUSAL - CL.845.213 – OWNERSHIP INTEREST – CL.845.216 – DIRECT AND CONTINUOUS INVOLVEMENT IN MANAGEMENT – The applicant applied for a Business Skills – Established Business (Residence) (Class BH) visa which was refused by a delegate of the Minister for Immigration and Citizenship. The delegate was not satisfied that the applicant, in his initial role of Installation Manager during the relevant period July 2003 to January 2005, maintained direct and continuous involvement in the management of the business in the 12 months immediately preceding the making of the application as required by cl.845.216 of Schedule 2 to the *Migration Regulations 1994* (the Regulations). The delegate concluded that managing one division of a business did not constitute involvement in managing the whole of that business. The delegate was also not satisfied by the nature of the applicant's shareholding for the purposes of satisfying cl.845.213.

Held: Decision under review set aside

The Tribunal was satisfied that in his role as Installation Manager, the applicant was part of a small management group directing a substantial workforce and directly and continuously involved in the board's decisions regarding the running of the business for the purposes of satisfying cl.845.216. The Tribunal also found that the applicant had a 10% ownership interest in the business as required by cl.845.213. Although the applicant's shares did not attract all the same rights as ordinary shares, the Tribunal was satisfied that the applicant had an ownership interest in the sense that if the business(es) were to be wound up as a going concern, he was entitled to participate in the distribution of the

assets to a value of 10%. The Tribunal was accordingly satisfied that the applicant met cl.845.213 for the purposes of the grant of the visa.

Partner and Family Visas

060393841

13 August 2007, Sydney

Ms K Raif, Member

AGED PARENT (RESIDENCE) (CLASS BP) VISA – SUBCLASS 804 - CL.804.223 – BALANCE OF FAMILY TEST – CL.804.225 – PUBLIC INTEREST CRITERION 4005 – ADOPTION – LAWFULLY AND PERMANENTLY RESIDENT

– The applicant applied for an Aged Parent (Residence) (Class BP) visa which was refused by the delegate of the Minister for Immigration and Citizenship on the basis that the applicant did not satisfy cl.804.223 of Schedule 2 to the *Migration Regulations 1994* (the Regulations), being the ‘balance of family test’, and cl.804.225 because she did not satisfy Public Interest Criterion (‘PIC’) 4005. The delegate found that the applicant did not meet the ‘balance of family test’ because there was no evidence that one of the children (‘the child’) claimed as her own was either an Australian citizen or an Australian permanent resident as required by the Regulations. The delegate also found, on the basis of an opinion from a Medical Officer of the Commonwealth, that the applicant did not satisfy PIC 4005. In relation to the child, the applicant was not listed as a parent on his birth certificate and there was no evidence of a formal adoption taking place. The applicant claimed that she was the parent of the child by virtue of customary adoption and that the child, despite being temporarily offshore, was an Australian permanent resident. The applicant also requested a new medical assessment by the Review Medical Officer of the Commonwealth (‘RMOC’).

Held: Decision under review set aside

The Tribunal accepted that the arrangements for the child’s adoption made by the applicant were consistent with the usual practice or a recognised custom in their culture for the purposes of r.1.04 of the Regulations. The Tribunal also considered whether the child was required to hold a permanent visa in order to be lawfully and permanently resident in Australia. It concluded that, since the term was undefined in the legislation and in light of the judicial interpretation of similar terms, it was sufficient that the child intended to live in Australia permanently or indefinitely. The Tribunal considered it to be significant that the child had been resident in Australia for a period of nearly 20 years (with an absence of less than eight months) and accepted that he therefore intended to treat Australia as his home. As the Tribunal was satisfied that the number of the applicant’s children who were lawfully and permanently resident in Australia was greater than or equal to the total number of the applicant’s children residing overseas, the applicant met the ‘balance of family test’ in cl.804.223. Furthermore, the RMOC provided an opinion that the applicant met the prescribed health criteria and the Tribunal found that the applicant satisfied PIC 4005 and accordingly cl.804.225.

071186139

24 August 2007, Sydney

Ms P McIntosh, Member

PARTNER (PROVISIONAL) (CLASS UF) – SUBCLASS 309 – CL.309.222 – SPONSORSHIP – REGULATION 1.20J – LIMITATION ON APPROVAL OF SPONSORSHIPS

– The visa applicant applied for a Partner (Provisional) (Class UF) visa on the basis that he was the spouse of, and sponsored by, the review applicant. The review applicant had previously sponsored 2 spouses who were granted visas on the basis of her sponsorship. The delegate found that the visa applicant did not meet cl.309.222 of Schedule 2 to the *Migration Regulations 1994* because the sponsorship was not approved and there were insufficient compelling circumstances to exercise the waiver of the sponsorship limitation under r.1.20J(2). The review applicant submitted that she had 3 unfortunate marriages before her present marriage, that she had lived in Australia for over 20 years and loves the country and that the many flights overseas to visit the visa applicant were causing her hardship. She claimed that she had attempted to live with him in Taiwan and the USA but the financial and physical strain were unsustainable so she persuaded the visa applicant to change his mind about living in Australia. The review applicant also claimed that she did not want to live in Taiwan because the water quality was not good, it was too hot and she did not like the government or feel safe because of the politics. The review applicant relied on the visa applicant for financial support, referred to her poor health and claimed her marriage could not last if the visa applicant was not granted a visa.

Held: Decision under review affirmed

The Tribunal found that the review applicant had already successfully sponsored 2 previous spouses who were granted visas on the basis of her sponsorship. Accordingly, the Tribunal found that the sponsorship limitation in

regulation 1.20J applied. In considering whether the limitation could be waived under r.1.20J(2), the Tribunal considered that there were no compelling circumstances. The Tribunal had regard to the review applicant's claims of health-related hardship arising from having to travel abroad and her objection to living with the visa applicant in Taiwan. The Tribunal found that the review applicant was not in poor health and did not require the visa applicant to take care of her for health reasons. The Tribunal accordingly rejected the review applicant's claims regarding hardship because of travel requirements or quality of life issues in Taiwan as compelling circumstances to justify the approval of the sponsorship. The Tribunal was not satisfied that the review applicant's sponsorship of the visa applicant was approved and therefore the visa applicant did not satisfy cl.309.222.

060692130

10 September 2007, Sydney

Mr D Dobell, Member

PARTNER (TEMPORARY) (CLASS UK) – SUBCLASS 820 – CL.820.224 – PUBLIC INTEREST CRITERION 4007 – SIGNIFICANT COST TO THE AUSTRALIAN COMMUNITY IN THE AREAS OF HEALTH CARE AND COMMUNITY SERVICES – WAIVER – UNDUE COST TO THE AUSTRALIAN COMMUNITY – The applicants applied for Partner (Temporary) (Class UK) visas on the basis of the primary visa applicant's spousal relationship with her Australian citizen husband. The delegate refused to grant the visas because the child applicant did not satisfy public interest criterion (PIC) 4007 (pursuant to cl.820.224 of Schedule 2 to the *Migration Regulations 1994*) because her health condition (Down syndrome) would result in a significant cost to the Australian community in the areas of health care and community services. A Medical Officer of the Commonwealth (MOC) assessed the child applicant's condition as a significant cost estimated at \$539 000 over her lifetime although the condition would be unlikely to prejudice the access to health care or community services of any Australian citizen or permanent resident. The applicants were New Zealand citizens and had lived in Australia since 2002. The primary visa applicant and her husband were employed, were assisted with the care of the child applicant through a network of friends and supporters as well as education and health services but had no family in either Australia or New Zealand. The child applicant was about to finish school, would attend day programs receiving education in life skills for the foreseeable future and would be likely to be able to work in some form of disability enterprise. The child applicant's parents claimed they intend for her to live with them 'until the grave' and would not live in community group homes.

Held: Decision under review set aside

Based on the MOC opinion, the Tribunal found the child applicant did not satisfy PIC 4007(1)(c) because she was a person who has a disease or condition such that the provision of health care or community services relating to that disease or condition would be likely to result in a significant cost to the Australia community. In considering waiver of the PIC 4007(1)(c) requirements under PIC 4007(2), the Tribunal had regard to Departmental policy. The Tribunal found it a compelling circumstance that the child applicant's father was an Australian citizen and that the visa applicants had the right to remain in Australia as New Zealand citizens. The Tribunal relied on evidence from the child applicant's doctors to find that the child applicant's needs, now and in the foreseeable future and in terms of children with Down syndrome, to be on the low side and that her health had improved since arriving in Australia. The Tribunal considered average life expectancy for those with Down syndrome, the possible contribution the child applicant may make to the economy by working, the contribution of her parents through their employment and the family's private support networks. Finally, as a compassionate factor, the Tribunal considered the possible impact on the child applicant of returning to New Zealand. The Tribunal found that the granting of the visas would be unlikely to result in undue cost to the Australian community in light of the compelling circumstances, the likelihood that the actual medical, health and other costs to the Australian community of the child applicant's needs would not be as great as anticipated, the potential for the child applicant to contribute to the Australian community, her parent's current and future contributions and the compassionate factor.

Student visas

060765447

20 August 2007, Sydney

Mr B MacCarthy, Senior Member

STUDENT (TEMPORARY) (CLASS TU) VISA – SUBCLASS 572 – VISA REFUSAL – CL.573.235 – COMPLY SUBSTANTIALLY WITH CONDITIONS – ACADEMIC PERFORMANCE – The applicant applied onshore for a further Student (Temporary) (Class TU) Subclass 572 visa to undertake studies in Australia. A delegate of the Minister for Immigration and Citizenship refused to grant the visa on the basis that the applicant did not meet cl.572.235 of the *Migration Regulations 1994* (the Regulations), which required the applicant to comply substantially with the conditions that applied to his last held visa. Item 8203(3)(b) of Schedule 8 to the Regulations, one of the conditions that applied

to the applicant's last held visa, required that the applicant achieve an academic result certified by the education provider to be at least satisfactory. The applicant's education provider had determined that the applicant's academic results were not at least satisfactory in the semester running from 27 February 2006 to 9 June 2006. The applicant acknowledged that he had technically breached condition 8202(3)(b) but argued that the breach was due to exceptional circumstances beyond his control, namely that a differently constituted Tribunal considered cancelling his student visa due to the same breach and had already identified exceptional circumstances. He also argued that his current academic performance had improved significantly and wished to continue his studies in Australia.

Held: Decision under review affirmed

The Tribunal found that the applicant had not complied with the requirements of condition 8202(3)(b) of his last held student visa because his education provider had not certified his academic results as being at least satisfactory during the relevant semester. The Tribunal considered the earlier Tribunal decision that the breach of that condition was due to exceptional circumstances beyond his control but concluded that the law relevant to this case did not allow the Tribunal to have regard to those exceptional circumstances. Accordingly, the Tribunal found that the applicant had not complied substantially with a condition of his last held visa and therefore failed to satisfy the criterion in cl.572.235 for the grant of a Subclass 572 visa.

Other visas

060918018

7 August 2007, Melbourne

Ms R Gagliardi, Member

RETURN (RESIDENCE) (CLASS BB) VISA – CL.155.212 – LAWFULLY PRESENT IN AUSTRALIA – COMPELLING REASONS FOR ABSENCE – The applicant applied for a Return (Residence) (Class BB) visa which was refused by a delegate of the Minister for Immigration and Citizenship on the basis that he did not satisfy cl.155.212(2) of Schedule 2 to the *Migration Regulations 1994* (the Regulations). Clause 155.212(2) required, inter alia, that the applicant be lawfully present in Australia for a period of, or periods that total, not less than two years in the period of five years immediately before the visa application. The delegate found that the visa applicant applied for his visa on 25 July 2006, despite last departing Australia in 1995 and not returning after that date. The review applicant claimed that compelling circumstances had prevented the visa applicant from returning to Australia earlier. These compelling circumstances were that the visa applicant's mother had died in 2000, that he had been required to provide care to his father who suffered health problems, that he was a 'critical resource' in his employer's offshore project from which he could not depart and that he had always intended to return to Australia. It was also argued that he was under the mistaken belief that previous visa extensions had been granted by the Department on the basis that he was living offshore with his daughter, an Australian citizen, and would therefore continue to be eligible. The review applicant also suggested that there had been a change in the relevant visa regime of which the visa applicant was unaware and that this should not be considered against his application.

Held: Decision under review affirmed

The Tribunal accepted that the visa applicant was a former Australian permanent resident, as required by the Regulations. However, it also accepted relevant evidence that the visa applicant had not been lawfully present in Australia since 1995. The Tribunal accordingly found that the visa applicant had failed to meet cl.155.212(2). The Tribunal did not accept that the visa applicant's care for his father, predominately undertaken by his sisters in India, or his overseas work commitments were compelling reasons for his absence for the purposes of cl.155.212(3). Furthermore, the Tribunal did not consider that lack of awareness of the Regulations constituted compelling circumstances. The Tribunal considered itself bound to assess the visa applicant against the Regulations in force at the time of his visa application. The Tribunal accordingly found that the visa applicant did not satisfy cl.155.212 or demonstrate compelling reasons for his absence from Australia.

060297088

28 August 2007, Melbourne

Ms D Buljan, Member

CULTURAL/SOCIAL (TEMPORARY) (CLASS TE) – SUBCLASS 428 – CL. 428.222 – TO UNDERTAKE WORK IN AUSTRALIA THAT DIRECTLY SERVES THE RELIGIOUS OBJECTIVES OF THE ORGANISATION – The applicant applied for a Cultural/Social (Temporary) (Class TE) visa on the basis that she was sponsored by 'Youth with a Mission' (YWAM). The visa application stated, among other things, that the applicant was employed by YWAM as a 'Youth Worker – Pastoral Carer'. In September 2005, the Department approved YWAM's sponsorship application to

employ the applicant in a 'Youth Ministry Team Leader' position. The position's job description set out various required qualifications relating to religion, youth work and horse training. In February 2006 the Department requested evidence of the applicant's qualifications that would demonstrate her suitability for the Youth Minister / Youth Worker position. The applicant provided evidence focusing on her qualifications and experience as a horse trainer, including using horses with children and people with disabilities. The delegate refused to grant the visa because she was not satisfied for the purposes of cl.428.222 of Schedule 2 to the *Migration Regulations* 1994 that the applicant held any qualification appropriate to meet the religious objectives of her sponsor and, given the emphasis the applicant placed on horse riding, was not satisfied that the main focus of the role was religious in nature.

Held: Decision under review set aside

The Tribunal observed that there are three parts to cl.428.222: the applicant must be sponsored by a religious organisation, be sponsored to undertake work that directly serves the religious objectives of the organisation and the sponsorship must be approved. As the Department had approved YWAM's sponsorship application and the approval remained in force, the applicant satisfied the first and third element of cl.428.222. The Tribunal considered the duties and responsibilities set out in the job description and pamphlets regarding YWAM's objectives in relation to the services it provides to troubled youth and had regard to Departmental policy regarding 'religious work'. The Tribunal was satisfied that the primary duties of the YWAM Youth Ministry Team Leader were religious and involved the provision of spiritual guidance and pastoral care to troubled youth. The Tribunal found this position similar to the positions previously undertaken by the applicant, that she had more than two years formal religious education and more than two years relevant post-education formal work experience as required for the position. On this basis the Tribunal was satisfied that the applicant would undertake work in Australia that directly served the religious objectives of YWAM, and that she accordingly met the requirements of cl.428.222.

REFUGEE REVIEW TRIBUNAL DECISIONS

China

071392399

19 July 2007, Melbourne

Ms S Borg, Member

CHINA – RELIGION – FALUN GONG – The applicant feared persecution as a Falun Gong practitioner. He claimed to have become involved in Falun Gong after arriving in Australia. The applicant claimed that in the early 2000s he came across Falun Gong practitioners who were handing out pamphlets suggesting it was good for the health and decided to try it. He claimed to have practised regularly with other practitioners either in one of their homes or alone in his own home. The applicant also claimed to have knowledge of the various positions and be able to explain Falun Gong's philosophies and principles. He claimed that if he were to be returned to China, he would continue to practise Falun Gong and would be imprisoned for doing so.

Held: Decision under review set aside

The Tribunal accepted that the applicant practised Falun Gong regularly, either in the homes of other practitioners or alone in his own home. The Tribunal found that the applicant's Falun Gong activities within Australia were to escape his feelings of isolation and loneliness and not simply to strengthen his claim to be a refugee. The Tribunal found that the applicant was a genuine and committed Falun Gong practitioner who held a well-founded fear of persecution. It also found that he could not reasonably relocate within China. Accordingly the Tribunal was satisfied that the applicant had a well-founded fear of persecution for a Convention reason.

071306562

21 August 2007, Sydney

Ms P McIntosh, Member

CHINA – POLITICAL OPINION – PARTICULAR SOCIAL GROUP – FALUN GONG – The applicant claimed to fear persecution as a Falun Gong practitioner. He claimed to have practised Falun Gong before it was banned and secretly after 1999. The applicant claimed that following a dispute with his neighbour he had been reported to the authorities, temporarily detained and questioned for being a Falun Gong practitioner and having his home searched. Although the applicant claimed not to have been persecuted at the time he acquired a passport and left China, he claimed to fear persecution from the authorities sooner or later. The applicant also claimed to have been blacklisted by the local government and the subject of a computer record held by customs authorities. The applicant also claimed to have participated in protest activities in Australia.

Held: Decision under review set aside

The Tribunal doubted that the applicant had been briefly detained after a neighbour reported him in to the authorities as a Falun Gong practitioner on the basis of his evidence to the Tribunal of having practised privately and in silence within his home. The Tribunal also inferred that the applicant's ability to acquire a passport and leave China without difficulty meant that he was not regarded as a practitioner. However, the Tribunal accepted that he was a genuine Falun Gong practitioner since his level of knowledge of its practice and philosophy illustrated genuine and comfortable familiarity. The Tribunal accepted that he had commenced Falun Gong practice in China, continued to do so privately after it was banned and practised in Australia for reasons other than to strengthen his protection claims. It was unnecessary for the Tribunal to consider his claims to have been detained or to have participated in protest activities within Australia. The Tribunal was satisfied that the applicant would continue to practise Falun Gong if he returned to China and to do so privately in order to avoid the threat of harm. The Tribunal was accordingly satisfied that the applicant had a well-founded fear of persecution for Convention reasons.

071558011

22 August 2007, Sydney

Ms K Raif, Member

CHINA – PARTICULAR SOCIAL GROUP – DENIAL OF MEDICAL TREATMENT – The applicant claimed to fear persecution for reasons of his membership of a particular social group. He claimed that he had a serious medical condition which required treatment and an organ transplant. The applicant claimed that he would be denied medical treatment in China and would die because he would be unable to pay for it. He also claimed membership of several particular social groups including Chinese citizens unable to pay the Chinese Government for medical treatment, rural

Chinese for which the government had failed to provide adequate medical care and protection, well-educated Chinese unable to access medical treatment, people from lower social groups lacking societal links or employment who could not access medical treatment and overseas Chinese individuals with health problems who could not access medical treatment.

Held: Decision under review affirmed

The Tribunal accepted that the applicant required specialised ongoing medical treatment and an organ transplant. It also accepted that the applicant might be unable to access that required treatment. However, the Tribunal found that all of the groups identified by the applicant, or otherwise identifiable on the basis of his characteristics (that is, the need for medical treatment and its unaffordability or unavailability in China) did not distinguish these groups from society at large. The Tribunal therefore found that the applicant was not a member of a particular social group. The Tribunal acknowledged the possibility of serious harm arising from lack of access to affordable health care services but did not accept that this amounted to systematic and discriminatory conduct or inaction by the Chinese authorities. The Tribunal did not accept that any harm that might result were the applicant to return to China would be for the essential and significant reason of his membership of a particular social group or for any other Convention reason. Accordingly, it was not satisfied that the applicant had a well-founded fear of persecution for a Convention reason.

071516380

5 September 2007, Sydney

Mr H Wyndham, Member

CHINA – POLITICAL OPINION – PRO-DEMOCRACY – The applicant claimed to fear persecution on the basis of actual and imputed political opinion. He claimed to have suffered persecution because of his father’s political opinion and for having supported pro-democracy demonstrations in 1989. The applicant also claimed that the authorities and neighbourhood committee had investigated and monitored him for making complaints in relation to government policy, the family classification system and his employer. He also claimed to have supported Falun Gong.

Held: Decision under review affirmed

The Tribunal did not accept that the applicant’s claims had any factual basis. There was nothing in what the applicant claimed concerning the family classification system to qualify as persecution. The Tribunal did not accept that the applicant’s sympathy for students at Tiananmen Square had only recently attracted the adverse attention of authorities. The Tribunal did not accept that the applicant had been investigated or monitored by the authorities or neighbourhood committee or that he would be of interest to them if returned to China in the foreseeable future. The applicant did not present any evidence of harm in relation to his claimed father’s political opinion. Furthermore, the Tribunal did not accept that he was a Falun Gong practitioner or to have suffered in the past for supporting other practitioners. Accordingly the Tribunal found that the applicant did not have a well-founded fear of persecution for a Convention reason.

071599690

19 September 2007, Sydney

Mr R Derewlany, Member

CHINA – RELIGION – POLITICAL OPINION – FALUN GONG – The applicant claimed to fear persecution for reasons of his practice of Falun Gong. The applicant claimed that he had been a practitioner in China since 1998. He claimed that he practised publicly until it was banned and although he practised privately he continued to have contact with other practitioners. The applicant claimed that he lost his job because he was a Falun Gong practitioner. He also claimed that he was involved in the promotion and distribution of material concerning Falun Gong. One night while distributing material he and a friend were chased by three men. This led the applicant to fear that he was being sought by the police who wished to question him about his activities. As a result he took steps to leave China, although he did not leave immediately because he was scared of the police. He claimed to have been watched by the police and was informed by friends that he was on a “wanted” list. The applicant practised Falun Gong in Australia. He claimed that he was a private person and that it was not his nature to get involved in large groups. The applicant claimed to fear being arrested and jailed if he returned to China.

Held: Decision under review set aside

The Tribunal found that the applicant was able to provide relevant evidence of his knowledge of Falun Gong, could demonstrate a good, if simple, understanding of the moral code and relevant Falun Gong principles. He could also refer to the principal Falun Gong text and explain how reading it was important for his practice. The applicant was

able to explain to the Tribunal how his practice benefited him both physically and spiritually and he could name and confidently perform the five exercises. Although the Tribunal found that some aspects of his evidence may have been embellished and there were minor inconsistencies, it was satisfied that his evidence overall was consistent with his claim to be a Falun Gong practitioner. It also found the delay in his departure was not inconsistent with his fears. The Tribunal accepted that the applicant lost his job as a result of his practice and that the authorities wished to question him. It also accepted the applicant's explanation concerning his practice of Falun Gong in Australia and was satisfied that it was otherwise than for the purposes of strengthening his claim to be a refugee. The Tribunal accepted that if the applicant returned to China he would continue practising Falun Gong as he had done since 1998 in both China and Australia. Therefore the Tribunal found that the applicant had a real chance of serious harm and was satisfied that he had a well-founded fear of persecution for reasons of his religion and political opinion.

Egypt

071544798

5 September 2007, Sydney

Ms Patricia Leehy, Member

EGYPT – PARTICULAR SOCIAL GROUP – HOMOSEXUALITY – The applicant claimed to fear persecution if returned to Egypt on the basis of his homosexuality. The applicant claimed to be a Coptic Christian who initially experienced difficulty in coming to terms with his sexuality. He claimed to have engaged in homosexual behaviour before being pressured by his family into marrying an Australian woman. Soon after arriving in Australia, the applicant's relationship with his fiancée ceased, he resumed homosexual activity and commenced a non-exclusive relationship with another Egyptian man.

Held: Decision under review set aside

The Tribunal accepted that homosexuals in Egypt constitute a particular social group who are, on the basis of independent information, subjected to treatment amounting to persecution by the authorities. The Tribunal found the applicant's evidence and that of the witnesses relating to his homosexuality to be persuasive. It accepted that the applicant is homosexual and that he wished to avoid difficulties with his family by marrying. It also accepted that he pursued this option with his fiancée for a short period after his arrival in Australia and was currently in a committed sexual relationship with his partner. The Tribunal accepted that, if returned to Egypt, the applicant would follow a homosexual lifestyle and face a real chance of arrest or ill-treatment for this reason. The Tribunal also accepted that he was identifiably Coptic which would increase the risk of harm. The Tribunal was accordingly satisfied that the applicant had a well-founded fear of persecution for a Convention reason.

India

071454965

29 August 2007, Sydney

Mr R Wilson, Member

INDIA – RELIGION – MUSLIM – The applicant claimed to fear persecution on the basis of his Muslim religion. He claimed to have commenced a relationship with a Hindu woman from a neighbouring area. He also claimed that her father was a member of an anti-Muslim organisation who vehemently opposed the relationship. The applicant claimed to have left the country after being threatened and returned only to care for his sick mother. He also claimed to have been targeted during a communal clash between local Muslims and Hindus led by the woman's father before police intervened and he soon departed for Australia.

Held: Decision under review affirmed

On the basis of independent information the Tribunal considered that national law did not preclude an inter-religious marriage and that the applicant could relocate to an area beyond the father's reach. It also found that the applicant would receive protection from the local authorities so that there was no real chance of discrimination amounting to persecution from the anti-Muslim organisation. The Tribunal found that the woman intended to convert to Islam and that it was reasonable and practical for the applicant to relocate given his language proficiency, education and low profile. Accordingly it found that the applicant did not have a well-founded fear of persecution for a Convention reason.

Pakistan

071229728

1 August 2007, Sydney

Ms R Mathlin, Member

PAKISTAN – POLITICAL OPINION – PAKISTAN MUSLIM LEAGUE (NAWAZ GROUP) – RELIGION – AHMADI –

The applicant claimed to fear persecution for reasons of his political opinion and religion. He claimed that he joined the Pakistan Muslim League (Nawaz Group) (PML-N) when he was very young and that all his relatives were members of the party. The applicant claimed to be a senior worker in his area and that he participated in demonstrations and distributed leaflets after the military coup. As such he claimed that he was targeted by the leaders in his party who had been blackmailed into joining the military regime. The applicant also claimed to have been harassed and detained and that he had been bashed and told to stop his activities or false charges would be laid against him. He also claimed that he was bashed by student members of the party after he stopped attending demonstrations at the request of a relative who feared he would be killed. The applicant claimed that he would be killed for his association with Ahmadis because he went to their homes and place of worship. He also claimed that he would be killed by the husband of his girlfriend and that the police would not protect him.

Held: Decision under review affirmed

The Tribunal found the applicant's evidence to be vague, inconsistent and confused. He was unable to provide any information about the aims and policies or history of the PML-N. Given this lack of knowledge the Tribunal did not accept that he had been involved with the party or that he faced any adverse consequences amounting to persecution arising from membership. The Tribunal noted that the applicant had only raised his claims concerning the Ahmadis or his married girlfriend late in the review and would have expected him to have raised them, at least in general terms, earlier. It concluded that even if these claims were true, they did not give rise to a well-founded fear. The Tribunal found that it was not credible that the applicant attended the Ahmadi place of worship given the serious discrimination suffered by Ahmadis and the consequences for suspected converts from Islam. It held that he had no significant association with the Ahmadis that would give rise to a well-founded fear of persecution. The Tribunal also found that the applicant had no genuine fear of harm for reasons of the extra-marital affair and, even if it were accepted, the claim did not fall for consideration under the Convention. It held that any harm resulting from an affair would be private harm, arising from his personal behaviour and circumstances. The Tribunal also found there was no suggestion that any failure of state protection would be for a Convention reason. Accordingly the Tribunal was not satisfied that the applicant had a well-founded fear for a Convention reason.

Sri Lanka

071411578

9 August 2007, Sydney

Ms J Ciantar, Member

SRI LANKA – PARTICULAR SOCIAL GROUP – HOMOSEXUAL MEN – The applicant claimed that he was Buddhist, Sinhalese and homosexual and later claimed that he had been baptised into the Catholic Church. He claimed that he could be imprisoned for being gay and that he could not hide his lifestyle because sooner or later people would find out and report him to the government. The applicant claimed to have been abandoned by his parents when they found out that he was gay and that it was difficult to find employment if people knew that an individual was gay. The applicant also claimed to have heard of homosexuals being bashed by the police and imprisoned. The applicant also claimed that he had not personally experienced any problems but that other gay individuals had done so since they were located by police even when meeting secretly.

Held: Decision under review set aside

The Tribunal accepted that the applicant was homosexual, Catholic and Sinhalese. The Tribunal also accepted that homosexuals in Sri Lanka constituted a particular social group for the purposes of the Convention. The Tribunal accepted that the only way the applicant could avoid further harm would be to continue to modify his behaviour, something the applicant was not prepared to do. The applicant primarily feared harm, harassment, social isolation, employment discrimination and the threat of harm from his family or from general members of the public. The Tribunal found that although the persecution feared emanated from the actions of private individuals, the applicant left

himself open to persecution. On the basis of independent information it was also likely that police harassed, extorted money or sexual favours from homosexual men and assaulted homosexual men in Colombo and other areas. The applicant also faced a risk of abuse by the authorities if he sought their aid in obtaining protection. The Tribunal was satisfied that the applicant would be unable to access adequate state protection and that this failure of state protection would be for a Convention reason. The Tribunal accordingly found that the persecution was for reason of membership of a particular social group, namely homosexual men, and that the applicant had a well-founded fear for a Convention reason.

Uzbekistan

071512328

21 August 2007, Sydney

Mr J Cipolla, Member

UZBEKISTAN – RELIGION – MUSLIM – POLITICAL OPINION – AKRAMYE – The applicant claimed to fear persecution for reasons of his imputed political opinions and as a practising Muslim in Uzbekistan. He claimed that whilst on a business trip he was witness to, but not an active participant in, a demonstration in which the National Security service fired into a crowd of protesters. He claimed that he was identified, detained, questioned and tortured by the police for his participation in the protest and it was alleged that he was a member of the Akramye Group. He claimed that he was only released upon payment of a bribe. He also claimed to have been detained and tortured by the authorities for attending prayer services at his local Mosque and only released after payment of a bribe and providing a guarantee that he would not attend further prayer services. The applicant claimed to have a police profile that would lead to his further arrest or mistreatment, and possibly death, should he return to Uzbekistan.

Held: Decision under review affirmed

The Tribunal found that the applicant's claims were fabricated in an attempt to secure refugee status. Evidence available to the Tribunal indicated that the claimed incidents occurred before the applicant had resided in Australia for a period of time on a student visa and that he had not applied for a protection visa during that period. Further evidence before the Tribunal indicated that the applicant had returned to Uzbekistan for a short period of time before returning to Australia. The Tribunal also found that the applicant's failure to make enquiries for protection upon his initial arrival in Australia, together with his return trip to Uzbekistan, were inconsistent with a genuine claim for refugee status. The Tribunal gave little weight to a psychologist's report on the basis that it was implausible that someone who had gone through what the applicant had claimed to have experienced would not avail themselves of protection at the first available opportunity. The Tribunal found that the applicant had not been subjected to arbitrary arrest on two occasions as claimed and therefore did not hold a well-founded fear of persecution for a Convention reason should he return to Uzbekistan.

FEDERAL COURT JUDGMENTS

ZHANG v MIAC
[2007] FCAFC 151

Federal Court of Australia, Finn, Kenny and Greenwood JJ, QUD 136 of 2007, 17 September 2007

This was an appeal from a judgment of the Federal Magistrates Court which upheld the decision of the Migration Review Tribunal (the Tribunal) that the appellant's application for review of a decision to cancel his Student (Temporary) (Class TU) visa was ineligible because it was not made within the prescribed time period.

On 2 March 2006 the delegate of the Minister made a decision to cancel the applicant's student visa. A letter and decision record advising the applicant was sent to the applicant's nominated 'address for correspondence'. A note on the file recorded that the letter was to be sent by registered mail. The Department also attempted to send to the applicant by email a copy of the letter and decision record. As the Department recorded the applicant's email address incorrectly, that email delivery failed. On 5 April 2006 the applicant lodged an application for review to the Tribunal. The wrong expiry date was supplied with the credit card details for payment. The correct expiry date was supplied on 11 April 2006. On 7 April 2006 at the migration agent's request, the cancellation letter and decision record were sent by the Department by email to both the applicant and his migration agent.

The Tribunal found that the letter and decision notice were correctly posted to the applicant in accordance with r.2.55(3)(c) on 2 March 2006. The Tribunal therefore found that because the applicant did not apply for review within 7 working days of the deemed receipt of the letter and decision record, his application was out of time.

The applicant contended that the notification of the delegate's decision was not in accordance with r.2.55 of the *Migration Regulations* 1994 (the Regulations), in that the delegate sought to rely on two grounds of notification and had not complied with the provision until both had been effected, or the applicant had chosen the most beneficial of the 'two inconsistent timetables': *H v MIMA* (2002) 118 FCR 153; and alternatively that the letter was not despatched to the "post box address" notified by the appellant, as required by r.2.55(3)(c)(ii) because the address was that of a dwelling.

Held: per curiam, Appeal dismissed

- (i) The service effected on the appellant by prepaid post complied with the requirements of r.2.55(3)(c).
- (ii) Even if it was the case that the failed attempt to e-mail the appellant on 2 March 2006 was intended to be a notification under r.2.55, that form of notification was knowingly abandoned and the pre-paid post method alone was relied upon. Unlike H's case, the present was not one in which two methods of notification were utilised. The re-sending of the notification letter and decision on 7 April 2006 did not start time running again. Notification had long since been effected.
- (iii) The term "post box address" in r.2.55(3) means no more than "postal address for service", making r.2.55(3) consistent with s.494B(3) of the *Migration Act* 1958 (the Act). Any other interpretation does not further the obvious purpose of the "service scheme" of the Act, nor does it reflect how r.2.55 should be construed in the context of the Act as a whole.

SZJUB v MIAC
[2007] FCA 1486

Federal Court of Australia, Bennett J, NSD506 of 2007, 25 September 2007

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that the appellant was not a person to whom Australia had protection obligations. The appellant claimed to fear persecution in China on the basis of having smuggled bibles into China. She also claimed that she had become a member of the Screaming Sect since arriving in Australia.

At the hearing, the appellant told the Tribunal that she did not understand the reasons for the decision of the delegate and the Tribunal said "Alright, well I'm reviewing that decision today but I'm looking at everything from the start. It's just like you've lodged the application and it's being reviewed for the very first time". The Tribunal rejected her claim to have become a Christian since arriving in Australia. At the hearing, the Tribunal questioned the appellant regarding her claim to have smuggled bibles and indicated that it was having real difficulty in accepting that she would take the risk of being involved knowing the potential consequences of doing so. The Tribunal rejected her claim of having smuggled bibles in China.

The appellant contended, inter alia, that the Tribunal failed to comply with the requirements of s.425 of the *Migration Act* 1958 (the Act) by failing to identify the issues that arose in relation to the decision under review and failing to take the steps necessary to identify the issues other than those that the delegate considered dispositive. The appellant identified the following issues in this regard:

- the appellant's practice of her Christian faith in Australia; and
- the appellant's willingness to risk her livelihood and to endanger her dependent child to assist her friend to smuggle bibles when the potential consequences of this choice were known to her.

Held: Appeal dismissed

- (i) The Tribunal did not fail to comply with s.425 of the Act. As the appellant indicated that she was not aware of the content of that decision and the Tribunal made clear it was "starting afresh", the Tribunal made it plain to the appellant that all issues identified in her visa application and the further issues raised at the hearing were, within the context of s.425, the issues that arose in relation to the decision under review.

Practice of Christian faith in Australia

- (ii) As this issue was raised for the first time before the Tribunal, the appellant should have been in no doubt that it was an issue arising in relation to the Tribunal's consideration and in relation to the decision under review. Therefore, she could not have assumed that it was not in issue because of the delegate's decision.
- (iii) The Tribunal asked the appellant a number of questions about her understanding of Christianity and her practice of it to which the appellant responded. The issue was clearly raised. The tenor of the questions made it apparent that the Tribunal did not accept the mere assertion and was testing it. The Tribunal was not obliged to explain its reasoning or thinking to the appellant.

Risk

- (iv) The existence of risk was an important factor in the rejection by the Tribunal of the appellant's claim to have been involved in the smuggling. The Tribunal clearly put the appellant on notice that it was having real difficulty in accepting that she would take the risk of being involved in a smuggling operation and being the target of the PSB. In the context of the Tribunal decision, the business and the child were not the issues on which the decision to reject the appellant's claim were based. They were not determinative but additional factual matters that elaborated that matters to be balanced against the risk.
- (v) The Tribunal is required to inform an applicant of an issue but not of each fact that relates to it. If something is an issue, the Tribunal should at least ask the applicant to expand upon the relevant points and explain why the account should be accepted. This is not to require the Tribunal to give a running commentary upon its thinking.

MIAC v SZCWF

[2007] FCAFC 155

Federal Court of Australia, Gyles, Stone & Allsop JJ, NSD709 of 2007, 27 September 2007

This was an appeal by the Minister from a judgment of the Federal Magistrates Court setting aside a decision of the Refugee Review Tribunal (the Tribunal) that the respondent was not a person to whom Australia had protection obligations.

The Tribunal accepted that the respondent, a citizen of Albania, was a member of a family involved in a blood feud with another family which began when his brother was accidentally killed by a member of another family and in revenge his father killed three members of that family including the person who killed his brother. However, it held that the events on which the respondent relied as giving rise to his fear of persecution as a member of his family were not motivated by a Convention-related reason. Accordingly, the Tribunal considered that s.91S of the *Migration Act* 1958 (the Act) required it to disregard the respondent's fear of persecution because of membership of the family because it arose from him being a son of the person targeted for a non-Convention reason.

The Federal Magistrates Court in the first instance held that the Tribunal committed a jurisdictional error by failing to correctly ask itself the threshold question posed by s.91S. Federal Magistrate Cameron was of the view there was no evidence cited in the Tribunal's decision which referred to the respondent's father's state of mind in the period between the killings he committed and his own death, and this lack of evidence reflected the fact that the Tribunal did not ask itself whether the respondent's claim derived from the persecution or fear of persecution of another member of the respondent's family as required by s.91S(a). As such, the Court held that there was no basis for the Tribunal to apply s.91S in this case.

On appeal to the Full Federal Court, the Minister contended that the Federal Magistrates Court misinterpreted s.91S and erred in concluding that it did not apply to the circumstances of this case.

Held: per curiam, appeal allowed

- (i) Section 91S required that the persecution of the father be disregarded in determining the respondent's application for a protection visa. The respondent's father was not killed for a Convention reason. He was killed in the context of an on-going blood feud, the immediate precipitating factor being his attack on members of the other family. Similarly, the section required the respondent's fear of persecution to be disregarded. For similar reasons any fear of persecution arising from the death of the father that the respondent's brothers may have had must also be disregarded.
- (ii) In considering whether the killing of the father involved "persecution", it goes without saying that it involved serious harm. It was a single incident but it was not an isolated (or random) incident. It must be viewed in the context of the surrounding circumstances, namely the blood-feud between the two families. It was reasonable for the Tribunal to assume in all of the circumstances that the serious harm to the father involved systematic and discriminatory conduct. In those circumstances it would also be reasonable for the Tribunal to assume that the father suffered fear of persecution before he was killed.
- (iii) The evidence of systematic and discriminatory conduct was found in the respondent's own claim that a blood feud had arisen between the two families. A blood feud of its very nature involves threats and counter-threats as each family exacts its revenge; it involves systematic and discriminatory targeting of each family. Given the background information concerning blood feuds and the father's rejection of attempts to reconcile the two families it would be reasonable to conclude that the father accepted that his family honour required him to seek revenge and that he would have known that a consequence of his doing so would be the other family seeking its own revenge.

FEDERAL MAGISTRATES COURT JUDGMENTS

SZJQN v MIAC & Anor

[2007] FMCA 1550

Federal Magistrates Court of Australia, Smith FM, SYG 3260 of 2006, 20 August 2007

The applicant sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) affirming a decision of the Minister's delegate that he was not a person to whom Australia had protection obligations.

The applicant claimed to fear persecution from a terrorist organisation as a result of video footage filmed in the course of his employment as a cameraman. Shortly after the airing of the footage on television, the reporter was threatened over the telephone. The applicant claimed he subsequently also received threatening phone calls and was later physically assaulted. The applicant understood the assault and threats to be made by members of the terrorist organisation referred to in the television report. In affirming the decision the Tribunal relied on apparent inconsistencies in the applicant's evidence regarding whether he had claimed and then later resiled from claiming, that his name had been given to the terrorist organisation by the reporter.

The applicant contended before the Court that the Tribunal relied on inconsistencies in the evidence of the applicant which were the product of inadequacies in the interpretation of his oral evidence at the hearing. It was further contended that the Tribunal failed to address a claim raised by the applicant's representative in written submissions to the Tribunal.

Held: RRT decision set aside and remitted for reconsideration

- (i) The Tribunal fell into jurisdictional error in that the reasoning followed by the Tribunal was materially influenced by incorrectly translated evidence of the applicant. This error resulted in a failure to afford the applicant the opportunity required under s.425 of the *Migration Act 1958*.
- (ii) The applicant always maintained that the reporter had only told the terrorists that an unnamed cameraman was responsible for the footage which had been aired. This error of translation resulted in an apparent contradiction by the applicant of himself and resulted in the Tribunal incorrectly concluding the applicant had given an implausible account of how his attackers obtained his name. The Tribunal treated as pivotal to its reasoning the mistranslation of this evidence.
- (iii) The Tribunal fell into jurisdictional error in that it failed to perform any consideration of an important issue raised by the applicant's representative and articulated by the applicant at hearing. The applicant's contentions raised a need for the Tribunal to address whether any Pakistani in the position of the applicant who claimed to have become a target of retaliation by a terrorist organisation in Pakistan would receive effective state protection from the authorities.

MZXPO v MIAC & Anor

[2007] FMCA 1484

Federal Magistrates Court of Australia, Riley FM, MLG 283 of 2007, 6 September 2007

The applicant, a national of Nigeria, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations. The applicant claimed to fear persecution for reasons of his involvement in the Movement for the Actualisation of the Sovereign State of Biafra (MASSOB).

The Tribunal, reconstituted after the matter was remitted by consent, did not accept that the applicant was a truthful or credible witness. It did not accept that he was a member of MASSOB or had been involved in MASSOB.

The applicant contended that the Tribunal failed to comply with its obligations under s.425 of the *Migration Act 1958* (the Act) in that it did not identify to the applicant issues critical to the decision which were not apparent and advise of any adverse conclusion which had been arrived at which was not obviously open on the known material.

Held: RRT decision set aside and remitted for reconsideration

- (i) The Tribunal failed to alert the applicant to an issue on which the decision turned. The Tribunal thus failed to comply with s.425 of the Act and accordingly fell into jurisdictional error.

- (ii) The applicant was not given any notice that the Tribunal might not believe that he was not a member or supporter of MASSOB for the reason that he was released without charge. Merely asking whether the applicant had been charged did not alert the applicant to the view the Tribunal might take of that fact. The view the Tribunal might take of the absence of charges was not obvious in circumstances where neither the delegate nor the Tribunal as first constituted had made any mention of the absence of charges.
- (iii) Whether a matter is an issue within the meaning of s.425 depends on whether the decision turned in part or in whole on that matter. In the present case, the Tribunal's reasons for not believing the applicant was a member or supporter of MASSOB turned in part on the absence of charges. Accordingly, the absence of charges was an issue within the meaning of s.425 of the Act. There is no reason to suppose that an issue within the meaning of s.425 of the Act must be a matter as major and fundamental as the example of nationality given by the High Court in SZBEL. However, the particular issues that the High Court said the Tribunal failed to notify the applicant of were issues that arose in the intricate detail of the applicant's account.
- (iv) The invalidity of the first decision made by the Tribunal did not invalidate the whole process undertaken by the Tribunal from the time the application was made to it until the time its first decision was handed down. The s.424A notice sent by the first Tribunal effectively and validly alerted the applicant to the issue of whether his MASSOB card was a fabrication and his inconsistent evidence about numbers killed by police following a protest. That notice was received by the applicant and he responded to it long before the hearing before the reconstituted Tribunal occurred. The decision in SZBEL requires the Tribunal to do no more than identify the issues either in writing before the hearing or orally during the hearing.
- (v) The delegate's reasons identified the applicant's lack of knowledge about MASSOB as an issue in the proceedings. Even if the delegate did not ask the applicant questions about the issue, it was an issue made clear in the delegate's reasons for decision. Subject to anything the Tribunal might say, the issues before the Tribunal are identified by the delegate's reasons for decision rather than by the matters that the delegate may or may not have questioned the applicant about.

Obiter

- (vi) It is not necessary to decide whether a post hearing s.424A letter, which is accordingly incapable of alerting the applicant to an issue prior to an oral hearing, satisfies s.425.

SZIQB v MIAC & Anor

[2007] FMCA 1420

Federal Magistrates Court of Australia, Raphael FM, SYG1013 of 2006, 6 September 2007

The applicant, a national of the People's Republic of China (PRC), sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations. The applicant claimed that he was detained and gaoled by PRC authorities for being a homosexual.

The applicant lodged an application for review with the Tribunal and was sent a letter requiring him to nominate whether he wished to attend a hearing. The applicant did not respond to the Tribunal's letter and the Tribunal proceeded to make a decision without holding a hearing. The Tribunal, whilst accepting his claim that he was a homosexual, did not accept that he had had any problems with the authorities as a result of it. The applicant changed addresses between the hearing letter being sent and despatch of the Tribunal's decision, and it was claimed by the applicant that he never received the decision. Although represented by a migration agent, the applicant took no steps until approximately seven years later at which time he authorised a friend to approach the Tribunal and a copy of the decision was obtained.

The applicant contended that the Tribunal's hearing invitation was defective and that the Court should exercise its discretion to refer the matter back to the Tribunal despite an apparent delay of almost seven years in bringing his application for judicial review before the Court.

Held: RRT decision set aside and remitted for reconsideration according to law

- (i) The letter requiring the applicant to nominate whether he wished to attend a hearing was defective in that it sought to impose time limits within which an election to be heard must be made. The Tribunal was not entitled to assume that failure to respond meant that the applicant did not want to attend a hearing: *Xie v Minister for Immigration* (1999) 167 ALR 188.

- (ii) The application to the Court was 'within time', by reason of the judgment in *Minister for Immigration v SZKKC* [2007 FCAFC 105].
- (iii) The applicant's delay in contacting the Tribunal regarding the status of his case was consistent with his wishes to remain in the country; wishing to remain in the country was consistent with his claim for refugee status. Conduct that was "[s]omething more... than simple delay" is required on the part of the applicant before the Court should exercise its discretion in refusing to grant relief.

Sok v MIAC & Anor

[2007] FMCA 1525

Federal Magistrates Court, Riley FM, MLG1603 of 2006, 7 September 2007

The applicant sought judicial review of a decision of the Migration Review Tribunal (the Tribunal) affirming a decision of the Minister's delegate refusing to grant him a subclass 100 Partner (Migrant) (Class BC) visa. The applicant had claimed that he was eligible for the visa due to domestic violence committed by his sponsor.

In its reasons for decision, the Tribunal considered itself bound by the opinion of a Centrelink social worker that the applicant was not the victim of relevant domestic violence.

The applicant alleged that the Tribunal decision was affected by jurisdictional error on several grounds, including that the Tribunal rendered ineffectual the applicant's right to a hearing, took into account irrelevant considerations, failed to have regard to relevant considerations and on the basis of reasonable apprehension of bias.

Held: MRT decision set aside and remitted for reconsideration

- (i) The Tribunal was obliged to invite the applicant to a hearing before seeking the opinion of an independent expert but failed to do so. Whether the alleged victim has suffered relevant domestic violence is an issue arising in relation to the decision under review. That issue cannot have already been foreclosed by the binding opinion of an independent expert. If it were otherwise, the hearing by the Tribunal under s.360 of the *Migration Act 1958* would be a pointless charade. Regulation 1.23(1B)(b) of the *Migration Regulations 1994* (the Regulations) only comes into play after the Tribunal has considered for itself the issue of whether the alleged victim has suffered relevant domestic violence. If the Tribunal after considering the issue is not satisfied, it is authorised to seek a binding opinion from an independent expert.
- (ii) Clause 100.221(4)(c) of Schedule 2 to the Regulations should be read as requiring the domestic violence to have occurred during the currency of the relationship. The policy behind the provision is to enable a person to leave an abusive relationship without compromising his or her immigration status.
- (iii) Paragraph 32.8 of the Procedures Advice Manual 3 of the Department of Immigration and Citizenship, by providing that it is appropriate to refer the claims of a male applicant to an independent expert unless the evidence in support of the claim is strong, is not in accordance with the Regulations. Every case needs to be determined on its own facts, irrespective of whether one of those facts includes the applicant's male gender. However, it cannot be inferred that the Tribunal acted on the basis of these guidelines.
- (iv) The Tribunal acted in accordance with authority in not giving reasons for being not satisfied that the applicant had suffered relevant domestic violence.
- (v) It was not for the Tribunal to consider the statutory declarations provided to it after it had reached a state of non-satisfaction and referred the matter to an independent expert. Once that point had been reached, the Tribunal had ceased to be seized of the matter and was bound by the opinion of the independent expert.
- (vi) The term "independent expert" is defined in r.1.21 in such a way that the expert does not need to be independent, in any absolute sense, from the government or anyone else. A social worker employed by Centrelink meets that definition.

SZJSS & Anor v MIAC & Anor

[2007] FMCA 1495

Federal Magistrates Court of Australia, Smith FM, SYG 3453 of 2006, 13 September 2007

The applicants, husband and wife citizens of Nepal, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that the applicant husband (the applicant) was not a person to whom Australia had protection obligations.

The applicant claimed to fear persecution as a teacher at a secondary school who had become a known proponent of pro-democracy movements and that he feared Maoists who he claimed had, among other things, forcibly abducted him for re-education and required him to make mandatory donations over a long period, and he feared the Royal Nepalese Army and police because of his history with the Maoists. The Tribunal did not make specific findings on the claimed past history. It noted that the applicant did not repeat at hearing all of the claims in the protection visa application and that it intended to only accept the claims it clarified with him and that were pursued at hearing. The Tribunal found that the applicant could relocate to Kathmandu and local Maoists would not be able or willing to trace him merely for leaving without advising them or not paying extortion demands.

The applicant contended that the Tribunal erred in finding the applicant could relocate to Kathmandu without considering the nature and extent of the applicant's claims cumulatively.

Held: RRT decision quashed and remitted for reconsideration according to law

- (i) The Tribunal committed jurisdictional error in failing to consider and make findings on significant elements of the applicant's claimed history in relation to its findings on relocation.
- (ii) It was not open to the Tribunal to conclude that the applicant did not rely upon the whole of the history presented with the visa application. Based on the Tribunal's description of the hearing, all the applicant did was identify his immediate reasons for fleeing from Nepal. This did not amount to abandoning any parts of his claimed history. A conclusion that parts of an original claim have been abandoned might easily be reached where an applicant makes inconsistent statements at hearing so as to expressly or implicitly retreat from earlier claims. That was not the situation in this case.
- (iii) It may be sufficient for a Tribunal to assume the truth of a history of persecution which was localised, without making positive findings as to the truth of that history. However, there is no general principle that this is permissible in all cases involving an issue of relocation. In many cases it is not possible to properly address a refugee claim by turning straight to relocation without having first assessed the truth of the claimed history in the usual place of residence, the likelihood of its recurrence and the risks arising from any recurrence
- (iv) It was not open, as a matter of law, for the Tribunal to withhold its judgment on significant parts of the applicant's claimed history of persecution by turning straight to an issue of relocation in Kathmandu. The risks facing the applicant in Kathmandu in the future could only be properly assessed by making clear findings as to his past relationship with the Maoists.

MZXNF v MIAC

[2007] FMCA 1289

Federal Magistrates Court of Australia, Riethmuller FM, MLG 1455 of 2007, 21 September 2007

The applicant, a Chinese national, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that he was not a person to whom Australia had protection obligations.

The applicant claimed to have absconded from a study tour because he feared persecution for reasons of his political opinion. He initially claimed that at the age of 14 he had been detained for one day after speaking out in school against the Tiananmen self-immolation incident. He later claimed to have suffered more incidents of serious harm. The Tribunal contacted the organiser of the tour which supplied it with certain evidence that the applicant was not who he claimed to be and was in fact "WT", aged 24. The applicant provided medical evidence that he was not 24 so could not have been "WT".

The Tribunal accepted the applicant's initial claims that at 14 he was detained for a day for speaking out but found he had not been politically active in Australia and would not be of interest to the authorities if he returned to China. It also made a preliminary finding that the applicant was not who he claimed.

The applicant contended that the Tribunal erred by failing to consider whether he would express his political opinions in the future. He also claimed it did not taking account of relevant information.

Held: RRT decision quashed and remitted for reconsideration

- (i) The Tribunal was required to consider whether the applicant would be at risk having regard to his particular behaviour and proclivities. However, it cast the case as a question of whether or not he was a "politically

active person” or merely “held the beliefs internally”. As a result of collapsing the test down to whether the applicant was “politically active” in Australia the Tribunal failed to consider the proper question and so fell into jurisdictional error. The proper application of the test required an exploration by the Tribunal of what may occur if the applicant must return to China.

- (ii) The question that must be answered was whether the applicant would express his political views openly just as he did when he was 14 and, if so, whether they would have far greater impact coming from an intelligent and well educated young man now of an age where he could be considered capable of provided a leadership role. The Tribunal accepted the genuineness of the applicant’s political opinion and that he suffered harm in the past for those beliefs. The applicant’s specific conduct was not referred to nor was his likely conduct if returned to China. There was nothing in the Tribunal’s findings to suggest he would not continue to behave in the manner that he did in the past.
- (iii) The Tribunal also failed to have regard to relevant material before it. The Tribunal failed to have regard to the evidence of the tour organiser that “WT” is a genuine identity based on family registration documents. That evidence would destroy the explanation that the Tribunal relied upon (being that the WT passport could contain bogus data about the holder) to avoid the conclusion that the advice of the organiser was false. The issue of the applicant’s identity was central to the applicant’s case.

LEGISLATION UPDATE

Legislative developments of relevance to the work of the Migration Review Tribunal and the Refugee Review Tribunal are noted below. The following Acts, Regulations and Instruments are accessible via the *Commonwealth Law of Australia* (COMLAW) website – (<http://www.comlaw.gov.au>)

Legislation Passed

REGULATIONS

Migration Amendment Regulations 2007 (No.11) (SLI2007, No.275) (Legislative Instrument – F2007L03558)

The *Migration Amendment Regulations 2007*(No.11) (SLI2007, No 275), commenced on 1 October 2007, amend the *Migration Regulations 1994* (the Principal Regulations), making a limited number of changes in relation to on-hire firms seeking approval as standard business sponsors and seeking nominations of business activities for grant of a subclass 457 (Business (Long Stay)) visa.

In particular, the Regulations amend the Principal Regulations to:

- prevent on-hire firms from applying for approval as a standard business sponsor after 1 October 2007 if the firm proposes to supply sponsored workers to other businesses. On-hire firms proposing to sponsor workers to be employed directly in their own businesses may still apply for sponsorship approval;
- prevent standard business sponsors who are on-hire firms from nominating any further positions after 1 October 2007, unless the position is one in the firm's own business to be filled by a sponsored visa holder to be directly employed by the firm; and
- prevent the grant of any further subclass 457 visa on the basis of sponsorship by an on-hire firm in respect of a position that is the subject of a nomination made by the firm on or after 1 October 2007, unless the position is one in the firm's own business to be filled by a sponsored visa holder to be directly employed by the firm or the on-hire firm has nominated the position as a party to a labour agreement.

Migration Amendment Regulations 2007 (No.12) (SLI 2007, No.314) (Legislative Instrument – F2007L03859)

The *Migration Amendment Regulations 2007*(No.12) (SLI2007, No.314), commencing on 15 October 2007, amend the Principal Regulations to introduce a new requirement that applicants for permanent, and selected temporary visas must sign a statement that, among other things, they will respect Australian values and will comply with Australian law for the duration of their stay in Australia (a values statement).

In particular, the Regulations:

- insert a new public interest criterion (PIC 4019) which makes it a requirement for the grant of a specified visa that the applicant sign a values statement;
- amend each specified subclass of visa, in the Principal Regulations to make it a time of decision requirement for each applicant, who had turned 18 at the time of application, that he or she satisfies the new values statement public interest criterion;
- require the Minister to specify, in an instrument in writing, one or more types of values statements and the subclasses of visa for which each type of values statement must be signed;
- allow the Minister to decide that the applicant is not required to sign a values statement where there are compelling circumstances; and
- provide for an applicant making an internet application to sign the values statement on behalf of other applicants included in the same internet application.

Migration Amendment Regulations 2007 (No.13) (SLI2007, No.315) (Legislative Instrument – F2007L03853)

The *Migration Amendment Regulations 2007* (No.13) (SLI2007, No.315), commencing on 15 October 2007, amend the Principal Regulations to make changes in relation to the domestic violence provisions in Division 1.15 of the Principal Regulations, Protection visas, Permanent Resident of Norfolk Island visas, Transit visas, and provisions relating to collection and use of Personal Identifiers.

In particular, the purpose of the amendments is to:

- Schedule 1: Update terms and definitions in domestic violence provisions to reflect the *Family Law Act 1975*;
- Schedule 2: Allow waiver on public interest grounds of the requirement in certain Subclass 866 (Protection) visa provisions for applicants not have been convicted of certain offences within a four year period;
- Schedule 3: Provide for discretionary evidencing of a Subclass 834 (Permanent Resident of Norfolk Island) visa grant;
- Schedule 4: Apply Public Interest Criterion 4003 to Subclass 771 (Transit) visa to allow visa refusals where an applicant's presence in Australia is determined to be contrary to Australia's foreign policy interests; or who may be directly or indirectly associated with proliferation of weapons of mass destruction; and
- Schedule 5: Ensure personal identifiers collected from a person in the context of a fisheries or environment detention can be used again if the person becomes an unlawful non-citizen immediately after a period of fisheries or environment detention.

INSTRUMENTS

Migration Act 1958 – Revocation of Section 499 Direction No.37 (Legislative Instrument – F2007L03825)

This Direction, effective from 26 September 2007, revokes instrument No. IMMI 07/034, Direction No. 37 – “Guidelines for considering cancellations of student visas for breach of Condition 8202” signed on 27 June 2007.

Migration Act 1958 – Direction under s.499 – Guidelines for considering cancellation of student visas for non-compliance with student visa condition 8202 (or for the review of such cancellation decisions) and for considering revocation of automatic cancellation of student visas (or for the review of decisions not to revoke such cancellations) – (Direction No.38 of 2007)

The Direction No.38 of 2007 made under s.499 of the *Migration Act 1958*, commenced on 19 September 2007, provides guidance to Department of Immigration and Citizenship decision-makers and review bodies about what may be considered as exceptional circumstances when considering cancellation of student visas for non-compliance with student visa condition 8202 (or for the review of such cancellation decisions) and for considering revocation of automatic cancellation of student visas (or for the review of decisions not to revoke such cancellations). The Direction applies to the Student Visa (Class TU) visa, subclasses 570 – 576.

Migration Regulations 1994 – Specification under paragraph 457.223(6)(a) and subclause 457.223(11) of Schedule 2 – Exemptions to the English Language Requirement for the Temporary Business (Long Stay) visa – October 2007 (Legislative Instrument – F2007L04068)

This instrument, commenced on 11 October 2007, specifies the categories of ‘exempted persons’ under subclause 457.223(11) and the level of salary, and method of calculating the level of salary, for the purposes of subclause 457.223(6)

Migration Regulations 1994 – Specification under regulations 1.20B, 1.20G(2) and 1.20GA(1)(a)(i) – Minimum Salary Levels and Occupations for the Temporary Business Long Stay visa – October 2007 (Legislative Instrument – F2007L04062)

This instrument, commenced on 11 October 2007, specifies, among other things, the methodology for calculating the minimum salary level using a salary formula, definitions and illustrative examples.

The purpose of this Instrument is to:

- update and clarify the methodology for calculating the level of salary for the purposes of defining the minimum salary level including inserted further definitions;
- update and simply the illustrative examples to assist employers and visa holders in determining whether or not the level of salary paid to the visa holder is at least the minimum salary level

Migration Regulations 1994 – Specification under subparagraph 1218(1)(b)(iii) – Travel Agents for PRC citizens Applying For Tourist Visas – September 2007 (Legislative Instrument – F2007L03774)

This instrument, commenced on 25 September 2007, specifies approved travel agents for the purposes of subparagraph 1218(1)(b)(iii) of Schedule 1 to the Regulations. The Instrument lists, at Schedule 1, the travel agents in Australia who are approved to escort PRC tour groups who travel to Australia under the Approved Destination Status (ADS) scheme. Schedule 2 to the Instrument lists the travel agents in the PRC who are able to lodge Tourist

visa applications under the ADS scheme. The Instrument has been amended to include four additional Australian agents in Schedule 1 who were approved to join the ADS scheme following the 2007 ADS application round.

Migration Regulations 1994 – Specification under regulations 5.19(4)(e) and (5), 1.20GA(1)(e) and 2.43(1)(a) – Regional Certifying Bodies and Post Codes Defining Regional Australia for Certain Visas – September 2007
(Legislative Instrument – F2007L03884)

This instrument, commenced on 4 October 2007, specifies the Regional Certifying Bodies that are approved to certify certain nominations made under the Regional Sponsored Migration Scheme and subclass 457 Business (Long Stay) visa programs. The Instrument also specifies the postcodes defining regional Australia for the purposes of Regional Sponsored Migration Scheme and subclass 457 Business (Long Stay) visa program.

Migration Regulations 1994 – Approval under Schedule 4, Part 3, Clause 3.1 – Australian Values Statement for Public Interest Criterion 4019 – October 2007
(Legislative Instrument – F2007L03959)

This instrument, commencing on 15 October 2007, specifies the wording of a statement that an applicant must sign, to meet the requirements of public interest criterion 4019 for the grant of certain visas. This includes provisions relating to:

- values that are important to Australian society;
- matters concerning Australia citizenship (if relevant); and
- compliance with the laws of Australia

Legislation Pending

Migration Amendment (Sponsorship Obligations) Bill 2007
(Bill - C2007B00148)

The *Migration Amendment (Sponsorship Obligations) Bill 2007* was introduced into the House of Representatives on 21 of June 2007. On the same day, the Selection of Bills Committee referred the Bill to the Senate and Constitutional Legislation Committee (SCLC) for public inquiry and a report by 30 July 2007. The completed report is now available on the Australian Parliament House website.
(http://www.aph.gov.au/Senate/committee/legcon_ctte/migration_sponsorship/index.htm)

The Bill seeks to amend the *Migration Act 1958* by introducing a regime of obligations to be met by employers who are approved sponsors in relation to a person for a visa. The new regime aims to apply to prescribed kinds of visas and where the obligations apply these will replace the current undertakings arrangements. Importantly, the new regime also incorporates enforcement provisions by way of civil penalties if an approved sponsor breaches an obligation.

The bill also includes provisions for inspectors to monitor an employer's compliance with their sponsorship obligations which is an important element of the enforcement regime. In addition there are enhanced information exchange powers between the Department and other prescribed Commonwealth, State and Territory Agencies.

Migration (Climate Refugees) Amendment Bill 2007
(Bill – C2007B00149)

The *Migration (Climate Refugees) Amendment Bill 2007* was introduced as a private member's bill to the Parliament by Senator Kerry Nettle on 20 June 2007.

The Bill seeks to create a new visa category to recognise refugees of climate change induced environmental disasters, and for related purposes.

Migration Legislation Amendment (Restoration of Rights and Procedural Fairness) Bill 2007
(Bill – C2007B00165)

The *Migration Legislation Amendment (Restoration of Rights and Procedural Fairness) Bill 2007* was introduced as a private member's bill to the Parliament by Senator Bartlett on 8 August 2007.

The Bill seeks to restore rights and procedural fairness to persons affected by decisions taken under the *Migration Act* 1958, and for related purposes.

CASELOAD OVERVIEW

MRT Decisions – September 2007

Decision Category	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Bridging refusal	4	9	2	0	15
Visitor refusal	9	9	3	1	22
Student refusal	10	17	0	3	30
Temporary business refusal	1	4	6	4	15
Permanent business refusal	5	4	1	0	10
Skill linked refusal	9	7	2	4	22
Partner refusal	73	35	1	0	109
Family refusal	12	13	2	0	27
Student cancellation	26	36	2	4	68
Sponsor approval refusal	1	3	1	0	5
Other	8	12	1	5	26

RRT Decisions – September 2007

Country	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Bangladesh	2	3	0	4	9
Burma (Myanmar)	0	1	0	0	1
China (PRC)	15	43	1	5	64
Cote D'Ivoire	0	1	0	0	1
Egypt	2	1	0	0	3
El Salvador	0	1	0	0	1
Fiji	0	1	0	0	1
India	2	54	0	4	60
Indonesia	0	4	1	0	5
Iran	0	1	0	0	1
Jordan	0	1	0	0	1
Korea, Republic Of	0	2	0	0	2
Lebanon	1	2	0	2	5
Malaysia	0	3	0	0	3
Nepal	0	1	0	0	1
Niger	0	1	0	0	1
Pakistan	2	4	1	0	7
Palestinian Terr. (W.Bank/Gaza)	0	1	0	0	1
Philippines	0	1	0	0	1
South Africa	0	1	0	0	1
Sri Lanka	2	4	0	0	6
Syria	1	2	0	0	3
Tanzania	0	1	0	0	1
Tonga	0	2	0	0	2
Turkey	0	4	0	0	4
Uganda	1	0	0	0	1
Ukraine	0	1	0	0	1
Vietnam	1	3	0	0	4
Zimbabwe	0	1	0	0	1

PUBLICATION OF TRIBUNAL DECISIONS

The Migration Review Tribunal and Refugee Review Tribunal are required to publish decisions that are considered to be of 'particular interest'.

Decisions which are regarded as of particular interest are decisions: identified as representing a broad cross-section of decisions having regard to factors such as the visa subclass and the outcome of the review; or where there is detailed consideration of legal arguments or policy issues; or where the factual circumstances are complex or unusual or where there is or is likely to be significant external interest; or where there is clear precedential value. The Tribunals aim to publish up to 20% of decisions made.

The Refugee Review Tribunal has a statutory obligation to ensure that the published version of a decision statement must not contain any information which may identify the applicant or any relative or other dependent of the applicant. Decisions that require extensive editing to meet this obligation may not be published.

A selection of Tribunal decisions are available on the Migration Review Tribunal and Refugee Review Tribunal's website located at <http://www.mrt-rrt.gov.au/>.

The website also contains information about how to apply to the Tribunals, how the Tribunals are organised, the function of the Tribunals, caseload statistics, as well as copies of this and previous Bulletins.

The website is updated on a regular basis.

The Migration Review Tribunal and the Refugee Review Tribunal shall not be liable for any reliance by any person on the summaries contained in this Bulletin. Each summary provides a guide only to each decision and should not, under any circumstance, be used as a substitute for the full text of a decision.

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