



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.

Contents

MIGRATION REVIEW TRIBUNAL DECISIONS	2
BUSINESS AND SKILLED VISAS	2
PARTNER AND FAMILY VISAS	4
STUDENT VISAS	6
OTHER VISAS.....	6
REFUGEE REVIEW TRIBUNAL DECISIONS.....	8
BURMA	8
CHINA.....	8
INDIA	11
LEBANON	11
PAKISTAN	12
RUSSIA.....	12
FEDERAL COURT JUDGMENTS.....	14
KIM v MIAC.....	14
SZGME v MIAC AND ANOR.....	15
MIAC v SZJGY	17
SZKGF v MIAC	17
SZKTI v MIAC	18
FEDERAL MAGISTRATES COURT JUDGMENTS	20
LI TIAN & ORS v MIAC & ANOR.....	20
SZFPA & ORS v MIAC	20
SZGLL & ANOR v MIAC & ANOR.....	21
SZJBH v MIAC	22
SZLCD & ANOR v MIAC.....	23
SZLQK v MIAC & ANOR.....	23
SZLTC & ORS v MIAC & ANOR.....	24
SZLXR v MIAC	25
LEGISLATION UPDATE.....	26
LEGISLATION PASSED	26
LEGISLATION PENDING.....	27
CASELOAD OVERVIEW	28
MRT DECISIONS – MAY 2008.....	28
RRT DECISIONS – MAY 2008.....	29
PUBLICATION OF TRIBUNAL DECISIONS	30
INDEX.....	31

MIGRATION REVIEW TRIBUNAL DECISIONS

Business and Skilled visas

071337596

24 April 2008, Melbourne

Mr P Fisher, Member

TEMPORARY BUSINESS ENTRY (CLASS UC) VISA – SUBCLASS 457 – CL.457.223 – S.140D – SPONSORSHIP BY AN APPROVED SPONSOR – A delegate of the Minister for Immigration and Citizenship refused to grant the visa applicant a Temporary Business Entry (Class UC) Subclass 457 visa on the basis that he did not satisfy cl.457.224 of the Migration Regulations 1994 (the Regulations). The delegate found that the applicant did not satisfy Public Interest Criteria (PIC) 4014 because the visa application was made not less than three years after he had last departed Australia as an unlawful non-citizen and none of the prescribed grounds for waiving that period existed. The visa applicant had nominated the position of Building Associate and made claims on the basis of sponsorship for employment by an Australian business.

Held: Decision under review affirmed

The Tribunal considered it unnecessary to determine whether compelling circumstances existed for the purposes of waiving PIC 4014 in view of other developments arising during the review. The Tribunal was not satisfied that the visa applicant continued to be sponsored by an approved sponsor at the time of the decision under s.140D of the *Migration Act* 1958. This visa applicant gave evidence that the managing director, who had sponsored the visa applicant on behalf of the Australian business, was no longer the managing director and had been barred from holding a directorship for 5 years. Although he had submitted a statutory declaration to the Tribunal, it was only in his capacity as a shareholder of the company and the Tribunal did not accept that a shareholder could ordinarily make undertakings on behalf of a company. The Tribunal requested, but did not receive, written confirmation from an office bearer of the company that it was continuing to sponsor the visa applicant. The Tribunal therefore found that the applicant did not meet cl.457.223(4). As the Tribunal was unable to conclude on the basis of the available evidence that the visa applicant satisfied any alternative criterion, it found that the visa applicant did not satisfy cl.457.223 of the Regulations for the purposes of the grant of the visa.

071345891

9 May 2008, Melbourne

Ms R Gagliardi, Member

EMPLOYER NOMINATION (RESIDENCE) (CLASS BW) VISA – EMPLOYER NOMINATION – REGULATION 5.19(2)(I) – PAYMENT OF GAZETTED SALARY – POLICY INTENTION – A delegate of the Minister for Immigration and Citizenship refused to approve an employer nomination for the applicant organisation. The delegate found that it did not satisfy r.5.19(2)(i) of the Migration Regulations 1994 (the Regulations) because it was not apparent that the nominated employee would be paid a salary that is at least the salary specified for the relevant occupation and location in the relevant Gazette Notice in force at the time at which the application for approval of the nominated position was made. Before the Tribunal, the applicant provided financial information indicating that the proposed employee, nominated for the position of Minister of Religion, would receive subsidies from it but would also be expected to raise their own financial support.

Held: Decision under review set aside

The Tribunal considered the policy underlying the employer nomination requirement of r.5.19(2)(i) of the Regulations. Nominations by religious organisations for positions with primary religious duties are regarded as satisfying this requirement if they either offer at least the gazetted salary or provide for all the nominee's living needs, including board, lodging and cash allowances for daily expenses and will meet all health, education, welfare and other costs incurred by them and dependent

family members directly from its own funds, at a value that equates with the gazetted salary. The Tribunal found that this policy was intended to prevent the exploitation of religious workers, ensure that their quality of life was not compromised and that small to medium-sized religious organisations could sustain their volunteer corps. The Tribunal gave significant weight to the most recent submissions provided by the applicant that more accurately represented the nominated employee's annual living costs and the subsidies provided to her. Accordingly the Tribunal found that the applicant satisfied r.5.19(2)(i) of the Regulations and substituted a decision that the employer nomination be approved.

071351220

2 May 2008, Sydney

Ms N Dougall, Member

DISTINGUISHED TALENT (MIGRANT) (CLASS AL) - SUBCLASS 124 - CL.124.211 - RECORD OF EXCEPTIONAL AND OUTSTANDING ACHIEVEMENT - BENEFIT TO AUSTRALIA - A delegate of the Minister for Immigration and Citizenship refused to grant the applicant a Subclass 124 Distinguished Talent (Migrant)(Class AL) visa as the delegate was not satisfied that the applicant had an internationally recognised record of exceptional and outstanding achievement in the sport of Black Bass Angling, that he was still prominent in the field and that he would be of exceptional benefit to Australia. The applicant claimed to be a highly distinguished angler, administrator and a trainer of bass anglers who was also involved in the conservation and hatchery of bass. The applicant claimed he had established many bass clubs and Bass Federation Chapters in Zimbabwe and South Africa; held presidential positions in these clubs and was considered the leading figure in the bass sports fishing community in Australia. He also claimed that he introduced new concepts and innovation for bass fishing internationally and mentored the first Australian to compete successfully on professional tours, who was also the highest ranked female angler in the world of bass and redfish angling. The applicant submitted that he was not claiming to meet the criteria as a currently competing angler. He further submitted that he would benefit Australia via his expertise in the technology of bass breeding, hatchery and conservation in Australia and that his connections and promotional skills would help Australian anglers qualify and represent Australia in international competitions. Furthermore, he submitted that he would have no difficulty in obtaining employment as he was qualified as a Deacon in the Catholic Church.

Held: Decision under review set aside

The Tribunal accepted evidence that the applicant was instrumental in establishing bass fishing as a competitive sport in Zimbabwe and South Africa. It accepted that the applicant was involved in the breeding and conservation. The Tribunal also accepted that the applicant was well known internationally and that he had established many bass clubs in South Africa and Zimbabwe as attested to by all of his referees. It found that the applicant's record of exceptional and outstanding achievement was not just in competition but in his administration of the sport of Bass Angling and that he was still prominent in his field of Bass Angling. The Tribunal was satisfied that the applicant's experience would strongly contribute to the establishment of a strong national competition for Bass Angling in Australia and may lead to international recognition of Australian Bass Anglers. It found that the applicant would be of exceptional benefit to the Australian community given his ability to raise Australia's standing in the sport of Bass Angling. The Tribunal also found that the applicant would have no difficulty in obtaining employment, or in becoming established independently, in the area of bass fishing as he was a Deacon at his local Catholic Church. Accordingly, the Tribunal found that the applicant met the requirements in cl.124.211 for the grant of the visa.

071557619

16 April 2008, Brisbane

Ms R Johnston, Member

EMPLOYER NOMINATION (RESIDENCE) (CLASS BW) VISA - SUBCLASS 857 - CL.857.213(b)(ii)(A) - AGE - EXCEPTIONAL APPOINTMENT - A delegate of the Minister for Immigration and Citizenship refused to grant a Subclass 857 visa on the basis that the applicant did not satisfy cl.857.213(b)(ii)(A), as the

applicant was over 45 years old and the delegate was not satisfied that the position she was nominated for was exceptional in relation to age. The applicant was 56 years old and nominated by Central Queensland University ("CQU") for the position of Conservation Biologist/Environmental Scientist. She contended that exceptional circumstances existed for the nominated position as the multidisciplinary aspects made it unique and highly specialised; she had performed the duties of the nominated position for several years; her age was not a hindrance, but rather an asset given the knowledge and experience she had acquired; and she was one of the few experts on the subject of an endangered Australian wallaby.

Held: Decision under review set aside

The Tribunal had regard to the position description and statements from the applicant's employer and references from third parties and was satisfied that the nominated position normally requires a person with skills and experience acquired over many years and that it would be difficult, if not impossible, to find a suitably qualified person younger than the applicant. The Tribunal accepted the employer's statement that due to the nature of the position to be filled, a person over the age of 45 was required. The Tribunal also considered the employer's suggestion that without the applicant managing and overseeing all aspects of Wildlife Unit operations, it would cease to operate. The Tribunal considered this plausible because of the remoteness of the location, the inability of CQU to have sufficient funding/resources to pay 'cash' remuneration, the current skill shortages in Australia and the multidisciplinary skills and vast experience that the applicant possesses. The Tribunal was satisfied that the appointment was exceptional in respect of the age requirement and that the applicant met cl.857.213(b)(ii)(A) and cl.857.213 as a whole.

071584595

8 April 2008, Sydney

Ms J Ciantar, Member

CULTURAL/SOCIAL (TEMPORARY) (CLASS TE) – SUBCLASS 421 (SPORT) – HOLDER OF A SUBCLASS 421 (SPORT) VISA – CL.421.222 – CL.421.230 – A delegate of the Minister for Immigration and Citizenship refused to grant the applicant a Subclass 421 visa on the basis that he did not meet the requirements of cl.421.222(4) of Schedule 2 to the Migration Regulations 1994 (the Regulations) as the delegate was not satisfied that the sponsor had good financial status in Australia. The applicant provided evidence that he trains 6 days per week at the Elouera Tony Mundine Gym and regularly participates in boxing events. The Gym, which is part of the Aboriginal Housing Company, agreed to sponsor the applicant. Evidence was also produced that the applicant lives with a friend rent free and receives financial assistance from friends and the Gym. The applicant provided his return ticket to Papua New Guinea and financial statements from the Aboriginal Housing Company.

Held: Decision under review set aside

The Tribunal found that the applicant was not required to meet the criteria in clause 421.222, as at the time of application, the applicant was in Australia and the holder of a subclass 421 visa. The Tribunal accepted the applicant's evidence that he trains at the Gym 6 days per week, as a boxer and he regularly participates in sporting events. The Tribunal was also satisfied that he received financial assistance from friends and the Gym. It was satisfied that he had a return ticket to Papua New Guinea when he arrived in Australia, at the time of his application and at the time of the Tribunal's decision. Therefore the Tribunal was satisfied that the applicant met cl.421.230, as there was no reason to believe that the applicant did not continue to satisfy the primary criteria for the grant of the visa. In the alternative, if the applicant was required to meet cl.421.222, he would satisfy cl.421.222(2) as the Tribunal was satisfied that the applicant had been entered to compete in a sporting event in Australia, that he had sufficient money for his personal support and was in possession of travel tickets to a destination in a foreign country.

Partner and Family visas

0800327

2 April 2008, Melbourne
Mr A Gregory, Member

PROSPECTIVE MARRIAGE (TEMPORARY) (CLASS TO) VISA – SUBCLASS 300 – VISA CANCELLATION – S.109(1) – CHANGE IN CIRCUMSTANCES – S.104(1) - A delegate of the Minister for Immigration and Citizenship cancelled the applicant's Subclass 300 visa pursuant to s.109(1) of the *Migration Act* 1958 (the Act) because they considered that the visa applicant had not notified the Department of a change in circumstances as required by s.104(1) of the Act. The visa applicant applied for the Subclass 300 on the basis of her prospective marriage to her Australian citizen sponsor. The visa was granted in July 2007 and the visa applicant arrived in Australia on 24 October 2007. On 29 October 2007 the Department of Immigration and Citizenship (DIAC) discovered that she had married a citizen of the United States of America (USA) prior to the grant of the visa. The visa applicant had not notified DIAC of this change in her circumstances. The visa applicant claimed before the Tribunal that she had since divorced her USA citizen husband and had married her Australian citizen sponsor.

Held: Decision under review affirmed

The visa applicant admitted that she had married a person who was not her Australian sponsor prior to the grant of her Subclass 300 visa. Consequently, the Tribunal found that the applicant had not notified the Department of her change of circumstances as required by s.104(1) of the Act. In considering its discretion to cancel the visa, the Tribunal noted that the applicant had subsequently divorced her USA citizen husband and had married her Australian citizen sponsor. However, it gave weight to the non-disclosure of a significant change in her circumstances and the fact that had the applicant informed the Department of her marriage to the USA citizen, she would not have been granted the Subclass 300 visa. Accordingly, the Tribunal was satisfied that the applicant had not complied with s.104(1) of the Act and found that the proper decision was to cancel her Subclass 300 visa.

0800583

24 April 2008, Melbourne
Mr A Gregory, Member

EXTENDED ELIGIBILITY (TEMPORARY) (CLASS TK) – SUBCLASS 445 (DEPENDENT CHILD) VISA – CL.445.211 – DEPENDENT CHILD – r.1.04 – ADOPTION – A delegate of the Minister for Immigration and Citizenship refused to grant the applicant an Extended Eligibility (Temporary) (Class TK) Dependent Child Subclass 445 visa. The delegate did not accept that the applicant was the dependent child of the visa-holding parent who was the visa applicant's eldest brother.

Held: Decision under review set aside

The Tribunal accepted information received subsequent to the Tribunal hearing. This included a document from Cameroon's High Court confirming that the eldest biological brother of the visa applicant was a suitable adoptive parent and that the visa applicant had become the adopted child of his eldest brother; and an affidavit from an advocate and notary public relating to guardianship and adoption under custom. The Tribunal accepted that the arrangements had not been contrived. The Tribunal further accepted that the visa applicant had been adopted formally under the law of Cameroon by the visa holding parent and therefore satisfied the required criteria.

071350038

31 March 2008, Adelaide
Ms D Morgan, Member

PARTNER (PROVISIONAL) (CLASS UF) – SUBCLASS 309 – R.1.15A – VALID MARRIAGE – A delegate of the Minister for Immigration and Citizenship refused to grant the visa applicant a Partner (Provisional) (Class UF) Subclass 309 Spouse (Provisional) visa on the basis that she did not satisfy cl.309.211 of Schedule 2 to the Migration Regulations 1994. The delegate found that as the visa applicant was under 18 years of age at the time of her marriage and was not eligible to marry. The delegate also found that because of her age the visa applicant did not meet the de facto spouse

provisions in r.1.15A. Three different dates of birth for the visa applicant had been provided and the Tribunal took evidence as to the correct date of birth.

Held: Decision under review affirmed

The Tribunal found there to be evidence of three different birth dates for the visa applicant, however it acknowledged that recording of birth dates in Cambodia is generally done on a self-reporting basis and that there is no formal birth recording requirements. In accepting the evidence of the visa applicant and her father as to her correct date of birth, the Tribunal found the visa applicant was only 16 at the time of her marriage. The Tribunal went on to find that Cambodia's Law on Marriage and the Family requires women to be aged 18 years or more, unless pregnant. The review applicant's evidence was that the visa applicant was not pregnant at the time. The Tribunal therefore found the marriage was not valid according to Cambodian law and therefore was not recognised under the *Marriage Act* 1961. As they were not validly married, the visa applicant could not satisfy r.1.15A(1A)(a). The Tribunal further found that as the review applicant was domiciled in Australia and the visa applicant was only 16 years of age at the time the application was lodged, she failed to meet r.1.15A(2)(b) for a de facto relationship. As the visa applicant failed to meet the age criteria in relation to both marriage and de facto spouse relationships, she could not meet cl.309.211.

Student visas

0800798

18 April 2008, Melbourne

Ms R Gagliardi, Member

STUDENT (TEMPORARY) (CLASS TU) – SUBCLASS 573 – VISA CANCELLATION – S.116(1) – CONDITION 8202(3)(b) – SATISFACTORY COURSE ATTENDANCE – A delegate of the Minister for Immigration and Citizenship cancelled the applicant's Subclass 573 (Higher Education Sector) visa under s.116(1)(b) of the *Migration Act 1958* (the Act). The delegate found that the applicant had breached condition 8202(3)(b), as his education provider certified that the applicant had not achieved satisfactory course attendance. The applicant argued that there were exceptional circumstances beyond his control due to his chronic back pain and provided evidence of having treatment in relation to it.

Held: Decision under review set aside

The Tribunal found that the education provider had certified that the applicant had not achieved satisfactory course attendance and the applicant had unsuccessfully sought internal and external appeals. It further found that there was no information before it which would suggest that the education provider did not act appropriately in the process. It therefore found that the applicant had not complied with condition 8202(3)(b). The Tribunal accepted the applicant suffered chronic back pain which caused him some difficulty with mobility as claimed. While not satisfied the applicant managed his condition as well as he could, the Tribunal nevertheless found that the non-compliance was due to exceptional circumstances beyond his control and therefore prescribed circumstances requiring mandatory cancellation of the visa in accordance with s.116(3) did not exist. The Tribunal considered whether the power to cancel the visa under s.116(1) should be exercised. Considering the circumstances as a whole, including the applicant's good academic record and clear commitment to his studies and the degree of hardship that would be caused to him in having his visa cancelled, the Tribunal substituted a decision that the applicant's visa not be cancelled.

Other visas

060952219

21 April 2008, Sydney

Ms D Dimitriadis, Member

RETURN (RESIDENCE)(CLASS BB) VISA - SUBCLASS 155 – CL.155.212(3) – TIES TO AUSTRALIA – R.4.12 – JURISDICTION – A delegate of the Minister for Immigration and Citizenship refused to grant the applicants a Return (Residence)(Class BB) Subclass 155 visa. The husband and wife applicants claimed to be former permanent residents who had substantial business, cultural, employment or personal ties with Australia which were of benefit to Australia. The applicants claimed that they had close relatives and extended family living in Australia. They claimed these ties benefited Australia because they benefited those relatives and friends and they will add to the community. The applicants claimed that the business left operating in Singapore had been given to their son. They also claimed that although their son and only grandchild lived in Singapore, those ties were not stronger than their ties to Australia. The applicants claimed establishing a business in Singapore and their intention to invest in trading opportunities between Southeast Asia and Australia would benefit the Australian economy. The applicants made separate visa applications, but both applicants were included in one review application with one fee paid. The Tribunal considered whether there was a valid combined application for review in accordance with r.4.12 the Migration Regulations 1994 (the Regulations).

Held: Decision under review affirmed

The Tribunal found the review applications could not be combined in accordance with r.4.12 of the Regulations and the Tribunal did not have jurisdiction to review the decision to refuse to grant the visa to the applicant wife. The Tribunal found no evidence the applicant husband had substantial employment ties to Australia. The Tribunal was not satisfied that the applicant husband had substantial personal ties with Australia that were of benefit to Australia. It accepted the applicants had close family in Australia and in Singapore, but did not accept that his ties to Singapore were not stronger than his personal ties to Australia. It noted the applicant husband only spent 28 days in Australia in the five years immediately before lodging the visa application. It was satisfied that at the time of application and decision his personal ties were to Singapore. His home and business were in Singapore, he lived there with his wife, and his son and grandchild were there. The Tribunal found there was no evidence that the applicant husband had been involved in intellectual, artistic, sporting or religious pursuits. It did not accept he had substantial cultural ties to Australia that were of benefit to Australia. The Tribunal found there was no evidence the applicant husband's Singapore business had ties to Australia or of a business being set up in Australia. It was not satisfied he had business ties to Australia which were of benefit to Australia. The Tribunal was not, therefore, satisfied the applicant husband satisfied cl.155.212(3) for the grant of the visa.

REFUGEE REVIEW TRIBUNAL DECISIONS

Burma

071897799

3 April 2008, Sydney

Ms Christine Long, Member

BURMA (MYANMAR) – POLITICAL OPINION – POLITICAL DISSIDENT – s.91R(3) - The applicant claimed to fear persecution for reasons of his political opinion. He claimed to have been a member of the All Burma Federation of Student's Union. He participated in anti-government rallies and demonstrations in Burma in the late 1980s in which he was shot at, detained, beaten and was required to give an undertaking not to be involved in politics. In Australia, he had attended demonstrations against the Burmese Government, distributed anti-government leaflets and joined a Burmese pro-democracy group. The applicant feared harm for his imputed political opinion as a failed asylum seeker, and claimed the authorities would treat him as a political dissident.

Held: Decision under review set aside

The Tribunal accepted that the applicant was involved in a minor way with politics as a student, but did not accept that he had a profile of interest to the authorities. The Tribunal did not accept that the applicant left Burma because he feared any harm. The Tribunal found the applicant had engaged in protests in Australia in the period before 2007, but could not be satisfied that these were engaged in otherwise than to strengthen his claims to be a refugee and disregarded this evidence under s.91R(3). However, the Tribunal noted that since 2007 the Burmese government had stepped up repression of political opposition and engaging in protest was taking quite a risk. The Tribunal was satisfied from the evidence that the applicant had participated in protests against the Burmese regime in Australia during 2007 and that this conduct was genuine and otherwise than to strengthen his claims to be a refugee. The Tribunal could not exclude the possibility that if the applicant returned to Burma he would be at risk of persecution because of his participation in anti Burmese government protests in Australia. The Tribunal was satisfied that the applicant was a person to whom Australia had protection obligations under the Refugees Convention.

China

0800227

3 April 2008, Sydney

Mr S Roushan, Member

CHINA – RELIGION – CATHOLIC – UNREGISTERED CHURCH - The applicant claimed to fear persecution for reasons of his Catholic religion. The applicant claimed that he was a practising member of an unregistered Catholic family church and he was baptised. He claimed that he was assigned the task of transporting believers to the family church meetings and he also delivered Bibles to other house churches. He claimed that he was detained and severely mistreated and injured by the authorities and feared further harm if were to return to China.

Held: Decision under review set aside

The Tribunal found the applicant to be a credible witness. The Tribunal accepted that the applicant belonged to an unregistered Catholic church, that he was dedicated to his faith and had attended meetings regularly and assisted his church community by providing transport and occasionally delivering Bibles to other churches. It also accepted that he was severely mistreated in detention and sustained a number of injuries. The Tribunal was satisfied that the applicant's detention and the treatment he was subjected to amounts to serious harm. The Tribunal further accepted that the applicant had continued to attend church in Australia on a regular basis and had remained a devoted believer. It was satisfied that the applicant would continue to be

involved with Christianity and practise his faith if he were to return to China. It found that the applicant's chance of facing arrest, imprisonment and torture for the reason of his religion if he returned to China now or in the reasonably foreseeable future was real. Accordingly, the Tribunal was satisfied the applicant had a well-founded fear of persecution for a Convention reason.

0800278

18 March 2008, Sydney

Ms A McDonald, Member

CHINA – RELIGION – FALUN GONG – The applicant claimed to fear persecution for reasons of her beliefs and practice of Falun Gong. The applicant claimed that she had begun practicing Falun Gong in a clinic to improve her health when various medical treatments had not helped her. The applicant claimed that she had learned to practice with an Elder who had also told her to read the book, to improve the spiritual world and to be a good person. After the Falun Gong practice was banned by the Chinese authorities the applicant claimed that she had been detained during a learning session in her home. She claimed that she had been tortured by the Chinese authorities because she opposed the treatment of practitioners and for her non-cooperative attitude. After her release the applicant continued to practice in China and moved from location to location. The applicant claimed that she had continued to practice Falun Gong on a daily basis since arriving in Australia and had protested against the treatment of Falun Gong practitioners in China. She also provided evidence from Australian Falun Gong practitioners to support her claims.

Held: Decision under review set aside

The Tribunal found the applicant to be a credible witness. The Tribunal found her account of how she became involved in practicing Falun Gong and the benefits she believes she has obtained from practicing Falun Gong was typical of accounts given by genuine Falun Gong practitioners. The Tribunal accepted that the applicant had been detained and continued to practice Falun Gong privately after that. The Tribunal found that the Chinese government's repression of Falun Gong continues unabated and it extends to all followers who are not prepared to renounce their beliefs. The Tribunal accepted that the applicant had continued to practice Falun Gong in Australia and that this practice had been engaged in otherwise than for the purpose of strengthening her claims to be a refugee. In the Tribunal's view if the applicant was to return to China there was a real chance that the Chinese authorities would detect her practice of Falun Gong and she would be detained and tortured for reasons of her beliefs. Accordingly, the Tribunal found that the applicant had a well-founded fear of persecution for a Convention reason.

0800325

28 March 2008, Sydney

Ms A Younes, Member

CHINA – RELIGION – FALUN GONG – S.91R(3) – The applicant claimed to fear persecution for being a Falun Gong practitioner. He claimed to have first been introduced to Falun Gong through his landlord and commenced practice to alleviate stress. He also claimed to have distributed Falun Gong materials in a public area, been arrested, ill-treated while in detention, released after paying a fine and subjected to surveillance. The applicant claimed to have been dismissed from employment and that Falun Gong materials were located after police searched his home. He provided statements from other practitioners referring to his activities in China and Australia in addition to photographs of him attending a rally in Australia. He also submitted information from several internet sites referring to his arrest and the harassment of his family.

Held: Decision under review affirmed

The Tribunal found that the applicant's evidence at the hearing was vague, lacked details, was internally inconsistent and was inconsistent with his written claims. The Tribunal formed the opinion that his knowledge of the development of Falun Gong was not commensurate with his claims. It was of the view that it was implausible that the applicant would distribute Falun Gong materials in a public and high security location. The Tribunal did not give weight to information on the internet, doubting its reliability and finding it was likely to have come from the applicant personally since

many sites can be edited and are not reliable or secure. The Tribunal also did not give weight to statements provided from other Falun Gong practitioners because it would not be difficult to get people to write such statements. The Tribunal was not satisfied that the applicant was a genuine Falun Gong practitioner or that he was ever involved in any actual or perceived Falun Gong activities. The Tribunal was not satisfied he had suffered any of the claimed harm. It was satisfied that the applicant had himself published information on the internet and those activities and any consequences flowing from them were disregarded pursuant to s.91R(3). The Tribunal found that the applicant did not have a well-founded fear of persecution for a Convention reason.

0800492

26 March 2008, Sydney

Mr J Duignan, Member

CHINA – POLITICAL OPINION – ONE CHILD POLICY – LAW OF GENERAL APPLICATION – S.91S – The applicant claimed to fear persecution because he had breached China's One Child Policy by having a number of children in the course of seeking to have a son. He claimed that a relative had previously been in charge of population planning in his village but had retired and the new person in charge treated him unfairly and issued him with a large fine for breaching the policy. The applicant claimed that the local authority took him to a court when he refused to pay the fine and spoke slanderously against the government. He produced an arrest warrant issued by a court in China. The applicant further claimed that when his relative was in charge of population planning in his village a woman was forced to undergo a sterilisation after the birth of her child and this family now had an official in the family planning bureaucracy in the area and were trying to go on a vendetta against the family of the applicant's relative. He feared that members of this family may enforce the law in a rigorous way and try to harm him.

Held: Decision under review affirmed

Having regard to the independent country information, the Tribunal found that the applicant was dealt with in the normal way in respect to the administration of the population planning policy in his local area. It found that the fine imposed on the applicant had not been set at an unreasonable or differential level because of some Convention characteristic. Further, the Tribunal found that the court's treatment of the applicant was fair and was not adversely impacted by the applicant's claim to have spoken slanderously against the government. Referring to s.91S, the Tribunal disregarded the applicant's claimed fear of harm by another family because it found that the vendetta did not relate to any Convention reason but rather an interest in harming the applicant or his relatives related entirely to a personal grievance. Accordingly, the Tribunal was not satisfied that the applicant was a person to whom Australia had protection obligations.

0800754

11 April 2008, Sydney

Mr A Jacovides, Member

CHINA – POLITICAL OPINION – ANTI-GOVERNMENT - The applicant claimed to fear persecution for reasons of his political opinion. The applicant claimed that his family land was confiscated by the local government for redevelopment and the compensation offered was inadequate, and for that reason, he participated in and led various protest activities, on behalf of himself and others, demanding adequate compensation. He claimed that he also organised petitions in support of the others arrested. The applicant claimed that his protest activities led to his arrest, detention and torture while in detention. He further claimed that he was dismissed by his employer and was threatened by the police. The applicant claimed that the authorities in China would seek to harm him again because he was considered a political activist by the authorities.

Held: Decision under review set aside

The Tribunal was satisfied that the applicant presented a credible account of his circumstances in China. The Tribunal accepted the applicant's claim that he was targeted by the authorities because he engaged in what the authorities considered to be anti-government activities. The Tribunal was satisfied that the applicant was targeted because of his political opinion and the

political opinion attributed to him by the authorities. Having regard to independent information, the Tribunal was satisfied that the applicant was at risk of arbitrary detention and torture by the authorities because he was considered a political agitator. Accordingly, the Tribunal was satisfied the applicant had a well-founded fear of persecution for reasons of political opinion.

India

0800223

14 April 2008, Sydney

Ms L Nicholls, Member

INDIA – RELIGION – MUSLIM – STATE PROTECTION – The applicant claimed to fear persecution for reasons of his Muslim religion. The applicant claimed that he suffered discrimination and harassment from the Hindu majority. He claimed he was taunted and insulted at work and got into fights instigated by others because of his religion. The applicant claimed a close family member was beaten by a Hindu mob and died. He claimed the police did not investigate. He also claimed he was attacked by a group of young Hindu men who had previously targeted him with insults and throwing things. He claimed the police did not investigate because he was Muslim and he did not pay a bribe.

Held: Decision under review affirmed

The Tribunal found the applicant did not attempt to exaggerate or embellish his evidence and was entirely truthful. It accepted he suffered insults and harassment and that a close family member was killed by a Hindu mob. While it accepted police did not take vigorous action it found it was because they expected a bribe not because the family were Muslim. It accepted he was attacked by Hindu youths and the police did not properly investigate or take effective steps to protect him. The Tribunal found that the police are affected by corruption arising from accountability and systemic failures, but police attitudes to bribes were not motivated by discrimination against Muslims. Nor was it condoned by national or state authorities although actions to prevent it had not been highly effective. It accepted that there were past incidences where police did not provide adequate protection to the Muslim community during communal violence, but noted the government was taking steps to ensure protection and improve accountability. The Tribunal found that the State authorities did not engage in discriminatory conduct nor did they condone violence and discrimination against members of the Muslim minority. The applicant was able to access a reasonable level of effective and non-discriminatory State protection according to international standards. As such the Tribunal was not satisfied the applicant had a well-founded fear for a Convention reason.

Lebanon

071473817

8 February 2008, Melbourne

Ms K Kirmos, Member

LEBANON – POLITICAL OPINION – SYRIAN SOCIAL NATIONALIST PARTY – The applicant, a national of Lebanon, claimed to fear persecution for reasons of his former membership of the Syrian Social National Party (SSNP). The applicant ceased his membership of the SSNP following the assassination of Rafiq Hariri and subsequent death threats made against SSNP members. The applicant claimed he was targeted by SSNP supporters because he was seen as a party defector, and that he was also targeted by SSNP opponents because he was seen as a traitor to Lebanon. The applicant gave evidence that he was shot at, his sibling's house was burned and that he was forced to flee his city. The applicant claimed he would be kidnapped and killed if he returned to Lebanon. Witnesses also gave evidence in support of the applicant's claims of persecution.

Held: Decision under review set aside

The Tribunal considered the applicant's evidence to be consistent and corroborated by other witnesses. The Tribunal accepted the applicant had been threatened and he and his family members attacked for his membership of the SSNP. In so finding, the Tribunal considered country information that reported violence against persons seen to be supporters, as well as opponents, of Syria. It accepted that the authorities were unable to offer protection. The Tribunal found there was a real chance the applicant may face serious physical abuse now and in the reasonably foreseeable future should he be returned to Lebanon, which was sufficiently serious to amount to persecution. It also found that the applicant would not be able to avoid persecution by relocating within Lebanon as attacks on pro- and anti-SSNP sympathisers did not appear to be centred in a particular region. The Tribunal found the applicant had a well-founded fear of persecution for the Convention reason of political belief.

Pakistan

071929223

25 March 2008, Sydney

Ms A Duffield, Member

PAKISTAN – RELIGION – SHIA – POLITICAL OPINION – ANTI-TALIBAN – PARTICULAR SOCIAL GROUP – MALIKS TRIBES – RELOCATION - The applicants claimed to fear persecution for reasons of their religion, political opinion and membership of a particular social group as members of the Maliks tribe and because of their anti-Taliban activities and Shia Muslim religion. They claimed they were persecuted by Sunni Muslim groups and some of the family had already been harmed and killed. The applicant husband also claimed to have spoken out against religious extremists during his employment and was targeted as a result. The applicants claimed that their relatives located and captured Islamist terrorists who then targeted the whole family. The applicant husband's outspokenness also led the extremists to target him in another city in Pakistan and the family was only safe if they stayed in a heavily fortified family compound guarded by armed men in the family village in the Federally Administered Tribal Area (FATA). The applicant husband claimed he would have extreme difficulty finding work elsewhere in Pakistan because of the quota system imposed on persons from the FATA and North West Frontier Province (NWFP) for recruitment for the public service and he had no family outside FATA, particularly to assist his wife who is unwell. The applicants claimed they would be tracked down and the police and government in FATA were pro-Taliban and could not protect them.

Held: Decision under review set aside

The Tribunal accepted the applicants' claims that their family was targeted by Taliban militants for assisting authorities after 11 September 2001; that members of the family were killed and injured by a Sunni Muslim tribe; and the applicant husband was outspoken against religious extremism. It found the security situation in their area was unpredictable with the possibility of the return of some combination of TNSM, pro-Taliban or pro-al Qaida forces in the reasonably foreseeable future. It further found sectarian violence between the Sunni and Shia ever present and opponents of Islamist extremism including the applicants would be regarded as political opponents. As such it was satisfied that the chance of harm because of their political opinion was not remote. It considered the risk significantly greater because the applicant and his wife's families were actively anti-Taliban. There was a real chance that the applicants might be harmed by religious extremists if they returned to their local village. The applicants, therefore, had a well-founded fear of persecution for reasons of political opinion and membership of a particular social group in that district. The evidence did not suggest the applicants' fear would be well-founded if they relocated, however the Tribunal considered relocation to be unreasonable. The Tribunal took into account the difficulties the husband would face finding employment, his wife's health and that he would have no relatives outside the area. The Tribunal found that he had a well-founded fear of persecution by reason of his political opinion, membership of a particular social group and religious beliefs.

Russia

071917225

3 April 2008, Sydney
Ms A O'Toole, Member

RUSSIA – POLITICAL OPINION – YABLOKO PARTY – S.91R(2) – SERIOUS HARM – The applicant claimed to fear persecution for reasons of her actual or imputed political opinion because of her support of the Yabloko Party. The applicant made lengthy claims and provided evidence of months of harassment by the Russian authorities, interviews with government authority investigators, threats of being prosecuted and imprisoned for tax avoidance if she refused to give evidence against the president of Company B and economic loss because of harassment by various government agencies.

Held: Decisions under review set aside

The Tribunal was of the view that the applicant was a credible witness. It was also satisfied that the harm the applicant claimed to fear would at least constitute significant physical harassment of the person or significant physical ill-treatment of the person. The Tribunal was satisfied that the harm the applicant claimed to fear was sufficiently serious to constitute persecution for the purposes of the Refugees Convention. The Tribunal accepted that the essential and significant reason for the persecution feared was her actual or imputed political opinion because of her support of the Yabloko Party. The Tribunal could not exclude as remote and insubstantial the chance that if she returned to Russia she would face persecution for a Convention reason. The Tribunal was therefore satisfied that there was a real chance the applicant would be persecuted for a Convention reason if she returned to Russia. The Tribunal was also satisfied that relocation was not a safe option for the applicant. Therefore, the applicant had a well-founded fear of persecution for a Convention reason in Russia.

FEDERAL COURT JUDGMENTS

Kim v MIAC

[2008] FCAFC 73

Federal Court of Australia, Tamberlin, Gyles and Besanko JJ, NSD 2046 of 2007, 9 May 2008

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a decision of the Migration Review Tribunal (the Tribunal) affirming a decision of the Minister's delegate to cancel the appellant's Subclass 457 (Business (Long Stay)) visa.

The appellant's visa was cancelled by a delegate of the Minister in 2003. That decision was affirmed by the Tribunal (the first Tribunal). The first Tribunal's decision was remitted by consent.

In consenting to the remittal in the Federal Magistrates Court, the Minister agreed that there had been no valid cancellation of the appellant's visa and that the appellant's children's applications for student visas should have been processed. The appellant had sought declarations that both the first constituted Tribunal's decision and the delegate's decision in relation to the cancellation of the appellant's visa were null and void. It was submitted by counsel for the Minister that the appellant did not need declarations of this kind, since the grant of prerogative writs would be sufficient. Accordingly, the declarations sought were not made; rather, the consent orders quashed the first Tribunal's decision and remitted the decision to cancel the appellant's visa to the Tribunal for reconsideration.

On remittal, the appellant claimed that the decision to cancel was a nullity, because of the defect in notification and because the cancelled visa would have expired (had it not been cancelled) before the date of the first Tribunal's decision. He claimed that the Tribunal did not have power to cancel a visa that has already expired. The second Tribunal found it did not have power to make findings on the validity of the cancellation of the appellant's visa, but decided that it did have power to engage in merits review and affirmed the decision to cancel the visa.

An application for review to the Federal Magistrates Court was unsuccessful. On appeal, the appellant argued: firstly, that it was not open to the Tribunal to affirm a decision which a Court had already implicitly held to be invalid; and secondly, that the Federal Magistrates Court erred by finding that the Tribunal had jurisdiction to "affirm" a purported decision to cancel the appellant's visa at a time when the visa had expired so that no visa existed to be cancelled.

Held: *per curiam*, appeal dismissed

per curiam:

(i) The Tribunal did have jurisdiction to affirm the delegate's cancellation of the appellant's visa. It did not err in its understanding of the nature and extent of its power to affirm. The power of the Tribunal to review a "decision" extends not only to review of a decision lawfully made, but also to one which is only purported to be made.

per Tamberlin J (Besanko J agreeing):

(ii) The fact that the Federal Magistrates Court made orders prior to the Tribunal's decision as a result of a concession by the Minister that the cancellation decision was invalid does not mean that the Tribunal lacked jurisdiction.

(iii) The affirmation of the cancellation decision by the Tribunal left in place the original decision of the delegate to cancel the visa so that, at the time of its expiry, the visa had been lawfully cancelled.

per Gyles J

(iv) There was no determination that the delegate's decision was invalid and no declaration was made to that effect.

- (viii) The appellant pursued his claim for merits relief, notwithstanding the expiry of the period of the visa. It does not lie in his mouth to complain if the Tribunal exercised its jurisdiction as asked.

SZGME v MIAC and Anor

SZJOZ v MIAC and Anor

[2008] FCAFC 91

Federal Court of Australia, Black CJ, Moore and Allsop JJ, NSD 457 and NSD 648 of 2007, 30 May 2008

These were appeals from decisions of the Federal Magistrates Court for SZGME upholding a decision of the Refugee Review Tribunal (the Tribunal) that the appellant was not a person to whom Australia had protection obligations and for SZJOZ refusing an application for extension of time to apply for judicial review of the delegate's decision. The matters were considered together as they involved the proper construction of s.48A of the *Migration Act 1958* (the Act) and validity of the applications for protection visas in question and circumstances in which relief under s.39B of the *Judiciary Act 1903* might be withheld.

SZJOZ

In 1996, the appellant lodged an incomplete application form for a protection visa. A delegate of the Minister refused the visa in 1997. The appellant sought Tribunal review of that decision, providing detailed claims in support of his application. The Tribunal affirmed the delegate's decision in April 1998. After unsuccessfully seeking ministerial intervention, the appellant made no further contact with the Department until June 2006, when he lodged a further protection visa application detailing his claims to be a refugee, which was rejected on the basis that s.48A prevented the application being made. The appellant did not file his application for judicial review of the delegate's decision within 28 days of receipt of the decision as required by s.477(1) of the Act, and sought an order to extend that period under s.477(2).

At first instance, the Federal Magistrate held that s.48A did not apply as the first protection visa application was not valid but exercised the Court's discretion to refuse to grant relief on the basis that the conduct of the appellant during the 8 years from being unable to locate his migration agent to approaching his priest for assistance was "shrouded by perpetuated dishonesty" and the fact he had had a merits hearing by the Tribunal of the claims he was now making.

SZGME

An application for a protection visa was filed in 1996 listing the appellant's daughter, husband (father) and the appellant as applicants in Part B of Form 866. In response to the question "Do you have your own claims to be a refugee?" the daughter ticked "yes" and filled in Form C but did not provide answers to questions regarding claims to protection. The father and appellant ticked "no" but did not fill in Part C or D. However, a statement signed by all three applicants made claims collectively that they were destitute and persecuted in their country and were seeking "refugee status". The delegate requested the parents submit a Part C form for their claims, but no response was received by the time of decision in 1997 refusing to grant them protection visas. The Part C forms for the parents were submitted only to the Tribunal. The Tribunal considered the claims of the daughter and each parent separately and was not satisfied that any of them had a well-founded fear of Convention-related persecution.

At first instance, the appellant contended, among other things, that the Tribunal lacked power to affirm the delegate's decision because the appellant had not made a valid protection visa application. The Federal Magistrate relevantly concluded that he was bound by *SZECD v MIMIA* (2006) 150 FCR 53 to hold that the supply of Part C forms to the Tribunal enabled the Tribunal to review the appellant's claims.

The appellants' contentions on appeal and those of the Minister raised the question of whether Full Federal Court authority relating to the making of valid protection visa applications in *Yilmaz v MIMA* (2000) 100 FCR 495 (*Yilmaz*) and *MIMA v Li* (2000) 103 FCR 486 (*Li*) was inconsistent. Appellant SZGME sought a declaration to clarify her rights concerning the operation of s.48A should she lodge a protection visa application. The Minister contended, among other things, that the reference to

“application for a protection visa” in s.48A means any request for such a visa and not an application that is valid.

Held: *per curiam* SZGME appeal dismissed; SZJOZ application for extension of time dismissed

Section 48A

per Black CJ and Allsop J

- (i) The term “an application for a protection visa” in s.48A means an application that is valid. The term does not cover an application to the Tribunal for review.
- (ii) No valid application was made by SZJOZ before the Tribunal decision in April 1998. On the authority of *Li*, the Tribunal decision in relation to SZJOZ was invalid and s.48A did not apply to SZJOZ’s June 2006 protection visa application.

per Moore J (dissenting)

- (iii) The definition of “an application for a protection visa” in s.48A(2)(aa) applied to SZJOZ’s first visa application even though the application to the Department was invalid.

per Moore J

- (iv) SZGME made an application for a protection visa which was refused. The application was advanced on the basis that SZGME was a member of the same family unit as her daughter. That circumstance is comprehended by s.48A(2)(ab). Even if that analysis is wrong, the expression “application for a protection visa” in s.48A(1) was intended to comprehend an application for a protection visa, even if the application does not make clear the factual or legal basis on which it is claimed the criterion in that section will be met.

Making a valid protection visa application and Tribunal review

per Black CJ and Allsop J

- (v) *Yilmaz* and *Li* are not inconsistent. *Yilmaz* concerned an application for a visa which was incomplete when the delegate made the primary decision, but was completed by the provision of information both to the Tribunal and to the Department, in accordance with r.2.10(1)(b). In *Li*, no valid application had ever been lodged, distinguishing *Yilmaz*. The *ratio decidendi* of *Li* is that a valid application is not merely a requirement affecting the delegate’s power. Through s.415 and ss.47 and 65 of the Act, only a valid application must be considered by the Tribunal.

Substantial Compliance

per Black CJ and Allsop J

- (vi) The question of substantial compliance is judged by reference to compliance with Form 866 and not by reference to the individual parts. The document sent by the migration agent to the Department together with the Part B provided a tolerably clear basis for understanding SZGME’s claim to be a refugee. The information in the Part B signed by SZGME, the supplementary statement and the migration agent’s letter made clear she claimed to be a member of the family unit which included her daughter and Part D was substantially complied with in this respect. In these circumstances the Tribunal was entitled to deal with the individual claims of SZGME with her Part C and further statement.

per Black CJ and Allsop J (obiter)

- (vii) If there was only substantial compliance insofar as it related to SZGME being a member of a family unit, there was, nevertheless, a valid application for a protection visa. There is no basis in the Migration Regulations 1994 (the Regulations) to conclude that a further application had to be filed to permit consideration of a changed basis for consideration of a valid application for a protection visa.

per Black CJ and Allsop J (obiter)

- (viii) There is no reason why an applicant could not apply for a protection visa as a refugee and on the basis of family membership.

Discretion to refuse relief

per Black CJ and Allsop J

- (ix) The Federal Magistrate erred in concluding SZJOZ's conduct was one of "perpetuated dishonesty". However, SZJOZ's conduct in invoking consideration by the Tribunal of the merits of his claim and waiting 8 years to deal with his own circumstances was inconsistent with the relief sought. It was not in the interests of administration of justice to extend the time for filing the application.

per Moore J

- (x) SZJOZ should be refused leave to appeal on the basis that any appeal would be futile. The delegate was correct in refusing to entertain the second application for a protection visa.

MIAC v SZJGY

[2008] FCAFC 87

Federal Court of Australia, Stone, Jacobson and Edmonds JJ, NSD 193 of 2008, 30 May 2008

This was an appeal from a decision of the Federal Magistrates Court which had set aside a decision of the Refugee Review Tribunal ('the Tribunal') affirming a decision that the respondent was not a person to whom Australia had protection obligations. The respondent claimed that he feared harm on political grounds arising from sustained harassment by the traffic police in China which commenced with his refusal to pay fines and bribes, leading to his imprisonment and then his engagement in political opposition to police corruption.

At the hearing, the Tribunal asked the respondent about inconsistencies in certain specific, but limited, parts of his evidence regarding this chain of events focused on the police attempts to obtain bribes and their response when the respondent refused to co-operate. Based on the respondent's oral evidence, the Tribunal did not accept that he had been truthful about his past experiences.

The Federal Magistrates Court found that the decision of the Tribunal was invalid because the Tribunal failed to comply with its obligations under s.425 of the *Migration Act* 1958 (the Act), by not indicating to respondent that the credibility of all of his claims were an issue before the Tribunal. The Federal Magistrate was of the view that the delegate's decision record did not put the respondent on notice that an issue arose as to the credibility of his entire account of his experiences in China.

The question on appeal was whether the Federal Magistrate erred in finding that the Tribunal had made a jurisdictional error by failing to accord the respondent procedural fairness as required by s.425 of the Act and whether the case fell within the principles stated by the High Court in *SZBEL v MIMIA* (2006) 228 CLR 152 (*SZBEL*).

Held: *per curiam*, appeal allowed. Application to Federal Magistrates Court dismissed

- (i) The Federal Magistrate had erred by finding that the Tribunal had not complied with its obligations pursuant to s.425 of the Act.
- (ii) This case was an example of the situation to which the High Court referred in *SZBEL* at [47], that "either the delegate's decision, or the Tribunal's statements or questions during a hearing, sufficiently indicate to an applicant that everything he or she says in support of the application is in issue."
- (iii) Where, as in this case, an applicant gives a chronological account of his experiences and the later elements of the account are a function of earlier events, the credibility of the later events must depend on whether the Tribunal accepts the earlier account. The Tribunal's refusal to accept the initial elements in the respondent's chain of causation was a sufficient reason not to explore later elements.

SZKGF v MIAC

[2008] FCAFC 84

Federal Court of Australia, Stone, Jacobson and Edmonds JJ, NSD2540 of 2007, 27 May 2008

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a Refugee Review Tribunal (the Tribunal) decision that the appellant was not a person to whom Australia had protection obligations.

The Tribunal invited the appellant to a hearing by letter sent to the appellant's correct number and street address. However, the postcode was incorrectly specified by the Tribunal as "2000" instead of the "2010". The appellant responded to the invitation and appeared at the scheduled hearing. Following the hearing, the Tribunal sent the appellant a letter under s.424A of the *Migration Act* 1958 (the Act), which was again correctly addressed except for the postcode. The appellant responded to the letter within the prescribed period.

The appellant contended, amongst other things, that the Tribunal did not comply with s.424A of the Act.

Held: *per curiam*, appeal dismissed

- (i) The clear absence in this case of any practical injustice or inconvenience resulting from the postcode error is such that, even if there had been a jurisdictional error, relief should be declined.
- (ii) The appellant received both invitations. He attended the hearing and responded to the s.424A letter. There is no suggestion that he was in any way inhibited in putting to the Tribunal any information or submission he wished to make. It is plain that he lost no opportunity to advance his case.

Obiter:

- (iii) There are cogent reasons for concluding that the postcode is not part of the address and therefore the use of the incorrect postcode did not result in non-compliance with s.424A(2)(a).
- (iv) No obligation under s.424A arose. The s.424A letter referred not to "information that would... be the reason ... for affirming the decision that is under review" but to inconsistencies given at the hearings and on earlier occasions.
- (v) While unnecessary to decide, the better view appears to be that following the remittal of the matter the Tribunal was not required to issue a further invitation under s.425 to attend a hearing.

SZKTI v MIAC

[2008] FCAFC 83

Federal Court of Australia, Tamberlin, Goldberg and Rares JJ, NSD2223 of 2007, 28 May 2008

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a Refugee Review Tribunal (the Tribunal) decision that the appellant was not a person to whom Australia had protection obligations.

Following a hearing under s.425(1) of the *Migration Act* 1958 (the Act), the Tribunal had invited the appellant to provide additional information under s.424(2). One item of additional information he had provided was a letter from two church elders attesting to his activities with the church in Australia, with a mobile telephone number for one of them, C, and a request to contact the authors if the Tribunal had any questions. Two months later, the Tribunal telephoned C and questioned him about the appellant, thus obtaining informational additional to that in the letter he had signed. The Tribunal had then written to the appellant pursuant to s.424A of the Act, advising that C's knowledge of the appellant appeared to be superficial. In its decision, the Tribunal relied on the additional information provided by C.

The critical issue was whether the Tribunal could simply telephone C and ask him questions without following the procedures in ss.424(3) and 424B of the Act. The appellant also argued that the matters of concern to the Tribunal arising from its telephone call were new issues such that s.425(1)

required him to be invited to a further hearing to give evidence and present arguments on those new issues.

Held: *per curiam*, appeal allowed

- (i) The Tribunal committed jurisdictional error by failing to follow the procedure specified in s.424(3) of the Act for inviting a person to give additional information.
- (ii) If the Tribunal requires additional information to be provided by a person it must follow the procedures that the Parliament has laid down to obtain that information. In its natural and ordinary meaning s.424(2) provides a means by which a person may be "invited" to give additional information to the Tribunal, that is, information which that person has not already provided to the Tribunal or which the Tribunal has not obtained in another way, such as pursuant to its powers under s.427(3) to summons a person to give evidence. The introductory words to s.424(2) identify one of the means available under s.424(1) which the Tribunal may employ to get information, but then s.424(2) [sic: s.424(3)?] prescribes the mode and limitations governing how it may invite a person to give it additional information.
- (iii) The Tribunal's telephone call to C amounted to an invitation to him to give new information additional to that in his letter. Therefore, s.424(2) was engaged and the Tribunal's obligations under s.424(3) were enlivened. Those obligations were not complied with.

Obiter:

- (iv) While unnecessary to decide, there was some force in the appellant's argument that once the Tribunal took the further step of speaking with C and forming a view that there was an issue, adverse to the appellant, relating to what it described as the "content and tenor" of the superficial contents from C, s.425(1) was again engaged.

FEDERAL MAGISTRATES COURT JUDGMENTS

Li TIAN & Ors v MIAC & Anor

[2008] FMCA 500

Federal Magistrates Court of Australia, Orchiston FM, SYG 2209 of 2007, 21 April 2008.

The applicants sought judicial review of a decision of the Migration Review Tribunal (the Tribunal) that affirmed a decision of the Minister's delegate refusing to grant Employer Nomination (Residence) (Class BW) visas.

The issue before the Tribunal was whether the primary visa applicant was a 'highly skilled person' within the meaning of r.5.19(3) of the Migration Regulations 1994 (the Regulations) as in force prior to 2 April 2005. The Tribunal considered that for the applicant to meet the requirements she must have completed the equivalent to formal training which, according to the Australian Standard Classification of Occupation (ASCO) dictionary for the relevant position, was five years. In addition, she was required to have been employed for three years before the lodgment of the application. The Tribunal was not satisfied on the evidence before it that the primary visa applicant was a highly skilled person as defined by r.5.19(3), therefore it found the primary visa applicant did not meet the requirements of cl.856.213(b) of the Regulations.

The applicant contended, among other things, that the Tribunal wrongly directed itself to as to the meaning of the term 'equivalent experience' in r.5.19(3) and that it failed to consider the applicant's request that the appointment be treated as exceptional.

Held: application dismissed

- (i) The Tribunal did not ask itself the wrong question or take into account irrelevant considerations in finding that the applicant did not satisfy the definition of a 'highly skilled person' in r.5.19(3). A proper construction of r.5.19(3)(a) does not require that the period of 'equivalent experience' be at least three years, rather than the five year period accepted by the Tribunal using ASCO. Rather the work experience must be equivalent to at least three years of formal training.
- (ii) The Tribunal was not required to assess a graded development from unskilled to skilled in determining equivalence to formal qualifications. The nominated position was Sales and Marketing Manager, therefore the Tribunal was bound to consider both the applicant's formal training, if any, and her work history against that of the nominated position of Sales and Marketing Manager.
- (iii) The Tribunal did not fail to properly consider the applicant's request that the appointment be treated as exceptional. It is not the function of the Tribunal to assess and determine the question of whether the approved appointment was 'exceptional' in determining whether the applicant met the criteria in the definition of a 'highly skilled person' in r.5.19(3). Rather, this must be determined at the time of determining the application for approval of the nominated position.
- (iv) The term 'unless the approved appointment is exceptional' in r 5.19(3)(b), should be construed according to its ordinary meaning, and the word "approved" should not be expunged from the Regulation merely because it provides a hurdle to the applicant.

SZFPA & Ors v MIAC

[2008] FMCA 550

Federal Magistrates Court of Australia, Emmett FM, SYG1889 of 2007, 2 May 2008

The applicant, a national of Egypt, sought judicial review of a decision of the Refugee Review Tribunal ('the Tribunal') that he was not a person to whom Australia has protection obligations. The applicant claimed that he feared persecution on the basis of his religion.

The Tribunal was reconsidering the matter upon remittal from the Court. The first Tribunal asked when the applicant had first spoken to a migration agent. In response, the applicant provided a copy of the migration agent's advice to the Tribunal to explain his delay in lodging his protection visa application.

During the second Tribunal's hearing, the Tribunal said 'In November 2002 things weren't looking very optimistic about you coming to live in Australia'. In response, the applicant told the Tribunal that he had spoken to his migration agent about how he could come to Australia and disclosed the essence of this advice.

The applicant contended that the second Tribunal failed to warn him that he was entitled to claim legal professional privilege and was not obliged to give evidence of privileged communications that he had with his migration agent who was also a solicitor. The Minister contended that *SZHWY v MIAC* [2007] FCAFC 64 was wrongly decided as it is premised upon the mistaken view that persons appearing before the Tribunal are required to answer any question asked by the Tribunal.

Held: application dismissed

- (i) A fair reading of the exchange between the Tribunal and the applicant did not support the contention that there was an uninformed disclosure of privileged communication.
- (ii) *SZHWY* was not wrongly decided and the Court was bound to follow that decision.
- (iii) In any event, the applicant waived any privilege he could have claimed over the communication because he had given the correspondence he had with his migration agent (solicitor) to the first Tribunal.
- (iv) Even if the Tribunal failed to warn the applicant that he was not obliged to give evidence of privileged communication, the disclosure of this communication did not form any part of the Tribunal's reasoning for affirming the decision under review.
- (v) There was no failure to comply with s.425. The Tribunal did not prevent the second applicant from giving evidence or presenting argument. Nor was there a failure to disclose issues that arose in relation to the review, as the applicant must have been taken to be on notice of the comprehensive nature of the adverse findings made by the first Tribunal.

**SZGLL & Anor v MIAC & Anor
[2008] FMCA 631**

Federal Magistrates Court of Australia, Orchiston FM, SYG2558 of 2007, 20 May 2008

The husband and wife applicants, who were nationals of Fiji of Indian ethnicity and Hindu faith, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that they were not persons to whom Australia had protection obligations. The applicants claimed to fear persecution arising from their membership of the social group called "Savini" which promoted the Hindu religion.

The Tribunal had previously made a decision in relation to the applicants which was set aside by the Court and remitted for reconsideration. Following remittal, the Principal Member signed a document entitled 'Constitution of the Refugee Review Tribunal for particular reviews' in which the applicants' proceedings were classified under the heading 'Newly Constituted Cases'. The reconstituted Tribunal again affirmed the delegate's decision on the basis that the applicants did not experience any harms in Fiji, nor were they fearful of any future harms should they return.

The applicants argued, amongst other things, that the Tribunal failed to consider all the integers of the applicants' claims including the separate claims made by the wife applicant and that the decision of the reconstituted Tribunal was vitiated by jurisdictional error in that the reconstituted Tribunal was not validly constituted to perform the review.

Held: application dismissed

- (i) The Tribunal was properly constituted pursuant to s.421 following remittal by the Federal Court and had the jurisdiction to hear the matter.
- (ii) When a case is remitted to the Tribunal following judicial review, s.421 applies to the allocation of the member to constitute the Tribunal. Remittal does not require a 'reconstituted' Tribunal to conduct the review in the s.422 or s.422A sense. Sections 422 and 422A are designed to empower the Principal Member to direct the removal of a member from a particular review and to direct another member to 'continue and finish the review'. These powers of reconstitution therefore relate to an on-going internal review situation and not to a case remitted to the Tribunal following external judicial review.
- (iii) The Tribunal did not err in not specifically referring to each of the separate claims of the wife applicant. A Tribunal is not obliged to refer to every piece of evidence and every contention made by an applicant in its written reasons, but may make findings of 'greater generality', which in this case it did in regard to the claims of physical harm to the wife applicant.
- (iv) The applicants were clearly on notice from the delegate's decision of the relevance and importance of s.91R. There was no procedural unfairness in this regard.

SZJBH v MIAC

[2007] FMCA 1441

Federal Magistrates Court of Australia, Driver FM, SYG1779 of 2007, 18 September 2007

The applicants sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that they were not persons to whom Australia had protection obligations.

In their protection visa application, the applicant wife, a national of China, and the applicant child relied, as members of the family unit, on the claims of the applicant husband, a national of Taiwan, who claimed to have a fear of persecution in Taiwan. Before the Tribunal, the applicant wife claimed to fear persecution in China for reason of her religion or membership of a particular social group, being a Falun Gong practitioner. The applicant husband retracted his claims and sought to rely on his wife's claims as a member of her family unit.

The Tribunal found that the applicant wife had not made claims pursuant to cl.866.211(a) of Schedule 2 to the Migration Regulations 1994 (the Regulations) and could not transform her original claim as a member of her husband's family unit into a separate claim on her own account. However, the Tribunal alternatively considered the applicant wife's claims on her own account. The Tribunal was not satisfied the applicant wife or husband were credible and considered that the applicant wife's study of Falun Gong was undertaken solely for the purposes of enhancing her protection visa application and was therefore to be disregarded pursuant to s.91R(3) of the *Migration Act 1958* (the Act).

The applicants contended, among other things, that the Tribunal had erred in finding that the applicant wife's claims of persecution could not be considered on review.

Held: application dismissed

- (i) The Tribunal's decision on the application of the protection visa criteria was consistent with present authority and was not infected by jurisdictional error.
- (ii) Section 36(2) establishes separate criteria for persons who claim Australia has protection obligations to them and persons who are a spouse or a dependant of such a person. The latter are not expected to satisfy the Minister that Australia has protection obligations to them directly under the Refugees Convention.

- (iii) Whilst cl.866.211 on its terms requires all applicants (whether persons claiming a well-founded fear of persecution or members of their family unit) to claim that Australia has obligations under the Refugees Convention to them at the time of application, this could not be what the drafter intended, and if it was the Regulation would be invalid as being inconsistent with the Act. The apparent intention of the criteria is to give effect to s.36 of the Act which divides visa claimants into those who assert protection obligations and those who seek to rely on those claimants. One has to be the one or the other.
- (iv) The Tribunal did not err in its application of s.91R(3).

SZLCD & Anor v MIAC

[2008] FMCA 542

Federal Magistrates Court of Australia, Orchiston FM, SYG2269 of 2007, 2 May 2008

The applicants, nationals of China, sought judicial review of a decision of the Refugee Review Tribunal (the Tribunal) that they were not persons to whom Australia had protection obligations.

The first applicant claimed to fear persecution on the basis that he was a Falun Gong practitioner and feared persecution from the Chinese authorities. The Tribunal was not satisfied that the first applicant was a practitioner of Falun Gong. The Tribunal found that there was not a real chance that the applicant would suffer serious harm if he returned to China and that he therefore did not have a well founded fear of persecution for a Convention based reason. The Tribunal sent a written statement of its decision to the applicant on 10 July 2007, omitting page 2 of the decision. A complete copy of the written statement was sent to the applicant on 23 August 2007, with the inclusion of page 2. Page 2 of the decision included background information regarding the application for review and set out the relevant law.

The applicant contended that the decision record of the Tribunal was incomplete and that as a result, the reasons of the Tribunal were not clear. The applicant also contended that the Tribunal selectively used his evidence at the hearing, and consequently did not afford him procedural fairness.

Held: application dismissed

- (i) The incomplete written statement provided by the Tribunal to the applicant complied with its statutory obligations under s.430(1). The content of the omitted page 2 did not touch upon the matters specified in s.430(1) which must be present in the written statement provided to the applicant pursuant to s.430B(6).
- (ii) The copy of the incomplete written statement was provided to the applicant by post within 14 days from the date of the handing down of the Tribunal decision, as required under s.430B(6). The failure of the Tribunal to provide page 2 to the applicant within the relevant statutory timeframe, is thus not fatal to its compliance with the statutory obligations imposed on it under s.430(1) and s.430B(6) of the Act.
- (iii) The Tribunal's findings were open to it on all the evidence and material before it. The Tribunal applied the correct law to those findings and reached its conclusions based on the findings made by it. The Tribunal clearly articulated its reasons for rejecting the applicant's claims based on its finding that the applicant was an unreliable witness who lacked credibility.
- (iv) The Tribunal complied with the statutory regime in according the applicant procedural fairness in the making of its decision and it performed the task required of it in accordance with law.

SZLQK v MIAC & Anor

[2008] FMCA 633

Federal Magistrates Court of Australia, Lindsay FM, SYG3549 of 2007, 23 May 2008

The applicant, a Nigerian 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 Tribunal had previously made a decision in relation to the applicant which was set aside and remitted for reconsideration by the Court. The Tribunal differently constituted, under a written direction by the Principal Member referring to ss.421 & 422 of the *Migration Act 1958* (the Act), again affirmed the decision of the delegate.

The applicant argued that the decision of the reconstituted Tribunal is vitiated by jurisdictional error in that the reconstituted Tribunal was not validly constituted to perform the review.

Held: application dismissed

- (i) The Principal Member was in error in reconstituting the Tribunal by relying on the wrong section of the Act. The correct section should have been s.422A of the Act.
- (ii) The error was not jurisdictional. It could be properly characterised as procedural. It did not violate any provisions of the Act which went to fundamental aspects of the Tribunal's work. A change in the identity of the member constituting the Tribunal was obviously appropriate in light of the Court's findings.
- (iii) It is plain that reconstitution of the Tribunal cannot be effected by using s.421 which deals with the initial constitution of the Tribunal. Section 422 gives a power of reconstitution where the relevant member has retired or is unavailable and s.422A deals with reconstitution other than on grounds of retirement or unavailability or, in other words, 'for cause', the cause being something that relates to the official conduct of the review. Upon court remittal in circumstances or for reasons which would make the continued presence of the previously constituted Tribunal member as the constitutive member of the Tribunal inappropriate, s.422 is not the mechanism for the reconstitution of the Tribunal with another member. That is the function of s.422A.

SZLTC & Ors v MIAC & Anor

[2008] FMCA 384

Federal Magistrates Court of Australia, Driver FM, SYG3796 of 2007, 27 March 2008

The primary applicant, a national of China, sought judicial review of a Refugee Review Tribunal (the Tribunal) decision that he was not a person to whom Australia had protection obligations. The applicant claimed to fear persecution as a Falun Gong Practitioner.

The Tribunal discussed the applicant's knowledge of the principles and practices of Falun Gong at the hearing. The applicant's inability to demonstrate substantial knowledge about Falun Gong, including Master Li's book, was significant in the Tribunal's adverse credibility finding.

The applicant claimed, *inter alia*, that he should have been put on notice of the information the Tribunal derived from Master Li's book and the significance of it.

Held: application dismissed

- (i) There was no jurisdictional error in the decision of the Tribunal. The information relied upon by the Tribunal was not 'information' for the purposes of s.424AA(a). Information for the purposes of s.424AA(a) should be given the same interpretation as that in s.424A(1)(a). Following *SZBYR v MIAC* [2007] HCA 26, Master Li's book did not of itself undermine the applicant's claims and the contents of the book were therefore not information that would be a reason or part of the reason for affirming the decision under review. What was critical was not the contents of the book, but the applicant's lack of understanding of it.
- (ii) There was no substance to the claim based on s.424A because of the exclusionary provision in s.424A(3)(a) and to the extent that the adverse credibility finding was based on the applicant's own evidence, there was no obligation of disclosure because of s.424A(3)(b).

- (iii) There was no obligation of disclosure in accordance with the principles enunciated in *SZBEL v MIMIA* (2006) 231 ALR 592, because it was clear from the decision of the delegate that the applicant's claim of being a genuine Falun Gong practitioner was subject to question.

Obiter:

- (iv) Section 424AA on its face appears to confer a discretion to disclose rather than to impose an obligation to disclose. It does not follow however that an obligation under s.424AA cannot arise, for example, if an obligation existed to ensure a fair hearing for the purposes of s.425 based on *SZBEL v MIMIA* (2006) 231 ALR 592.
- (v) It appears that if the Tribunal embarks upon a course of disclosure under s.424AA it does not enjoy the protections in s.424A(3). The fact that Parliament has chosen not to reproduce those exclusions leads to a view that they do not apply in relation to disclosure under s.424AA.

SZLXR v MIAC

[2008] FMCA 367

Federal Magistrates Court of Australia, Driver FM, SYG201 of 2008, 13 May 2008

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 review application was lodged on 30 July 2007.

In its decision, the Tribunal relied on inconsistencies in employment letters to find the applicant lacked credibility. One letter was submitted with the applicant's visitor visa application. The Tribunal put that letter and its relevance to the applicant at hearing and asked if she wished to comment.

The applicant submitted the Tribunal erred in not disclosing in writing the adverse information derived from the letter which was a document not submitted by the applicant in support of her review application. The question was whether the Tribunal met the obligations in s.424AA(b) of the *Migration Act 1958* (the Act).

Held: application dismissed

- (i) As the Tribunal met its obligations under s.424A(2A) and s.424AA(b) of the Act there was no jurisdictional error in the decision.
- (ii) Section 424A(2A) relieved the Tribunal of the obligation to disclose the adverse information to the applicant under s.424A if it gave her clear particulars of the information and invited her to comment on or respond to the information under s.424AA of the Act. The Tribunal's detailed summary of the employment letter and reference to the visa application discharged its obligation to give clear particulars of the relevant information. The Tribunal sufficiently explained why the information was relevant and the consequences of it being relied upon. It clearly invited the applicant to comment on or respond to the information and told the applicant she may have additional time to comment or respond. The Tribunal even took the trouble to confirm that the response by the applicant was her response to the conflicting information.
- (iii) It was not an error for the Tribunal to take account of evidence concerning the applicant's contact with an unregistered agent in assessing her overall credibility.

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 Legislation Amendment Regulations 2008 (No.1) (SLI 2008, No. 91)
(Legislative Instrument - F2008L01848)

The Migration Amendment Regulations 2008 (No.1) (SLI 2008 No. 91) amend the Migration Regulations 1994 (the Regulations) to expand eligibility for a second Working Holiday (Subclass 417) visa to include applicants who have undertaken specified work in regional Australia. It also clarifies that applicants who have applied for judicial or merits review of a decision made under the *Australian Citizenship Act 2007* can access a Bridging (General) (Subclass 050) visa; increases visa application charges and fees so that they are in line with increases to the Consumer Price Index (CPI); and provides for sufficient cost recovery. In addition, it amends the Immigration (Education) Regulations 1992 to increase the fees in line with the CPI for prescribed English courses available to migrants and other persons under section 4 of the Act.

INSTRUMENTS

Migration Regulations 1994 - Specification under regulation 1225(5) - Working Holiday Visa - definitions of seasonal work and regional Australia – May 2008 (Legislative Instrument - F2008L01738)
This instrument, registered on 28/05/2008, specifies the definitions of regional Australia and seasonal work to encourage people on Working Holiday Visas to live and work in regional Australia and support seasonal primary producers. This instrument also amends the existing definition of regional Australia to also include postcodes 4510, 4512 and 4516 (which cover areas in Queensland).

Migration Regulations 1994 –Specification under paragraph 2.25A(1)(b)- Specification of Countries - May 2008 (Legislative Instrument - F2008L01978) The purpose of this instrument, registered on 04/06/2008, is to include the People's Republic of China (PRC) and Taiwan in the list of countries which are able to clear the reports of chest x-rays and medical examinations undertaken for the purpose of meeting Australia's health requirement.

Migration (United Nations Security Council Resolutions) Regulations 2007 - Specification under regulation 4(1) - Specification of United Nations Security Council Resolutions - May 2008 (Legislative Instrument - F2008L02024) This instrument specifies relevant United Nations Security Council Resolutions. It was registered on 05/06/08 and takes effect from 6/06/08.

Migration Regulations 1994 - Specification under paragraph 4011(2)(b) - Classes of Persons - Public Interest Criteria - Risk Factor - May 2008 (Legislative Instrument - F2008L01746) This instrument, registered on 13/06/2008, specifies classes of persons subject to the Public Interest Criteria Risk Factor (PIC 4011). These classes of persons are defined by nationality, sex and age or age group. Persons who fall into a class specified in this instrument will be subject to the Public Interest Criteria Risk Factor. This instrument revokes Gazette Notice 50 of 20 December 2000.

Migration Regulations 1994 - Specification under paragraph 5.36(1A)(a) - Payment of Visa Application Charges and Fees in Foreign Currencies - June 2008 (Legislative Instrument - F2008L02077) The purpose of this instrument, registered on 13/06/2008, is to provide the Department of Immigration and Citizenship's offshore clients with the amount in local currency that they should pay in respect of a visa application charge when applying for a visa to enter Australia in a country (whether or not an independent sovereign state) outside Australia and the external territories.

Migration Regulations 1994 - Specification under paragraphs 5.36(1)(a) and (b) - Places and Currencies for Paying of Fees - June 2008 (Legislative Instrument - F2008L02080) This specification informs the Department of Immigration and Citizenship's offshore clients which currency to use to pay a visa application charge when applying, in a foreign country for a visa to enter Australia. It specifies the places in which payment of a fee must be made and the currency in which a fee may be paid in that place. It was registered on 13/06/2008.

Private Health Insurance (Health Insurance Business) Rules 2008 (Legislative Instrument - F2008L02090) These Rules, which were registered on 13/06/08, revoke the Private Health Insurance (Health Insurance Business) Rules 2007 and provide for private health insurers to expand hospital products to cover a broader range of services that substitute for or prevent hospitalisation, and categorise privately insured services as being hospital or general treatment. They are effective from 1/07/08.

Legislation Pending

There were no new Bills of significance to the Tribunals introduced.

CASELOAD OVERVIEW

MRT Decisions – May 2008

Decision Category	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Bridging refusal	3	13	3	2	21
Visitor refusal	20	7	2	5	34
Student refusal	28	12	6	5	51
Temporary business refusal	4	8	6	8	26
Permanent business refusal	8	8	1	0	17
Skill linked refusal	34	16	6	7	63
Partner refusal	86	50	15	5	156
Family refusal	26	33	4	1	64
Student cancellation	35	21	4	2	62
Sponsor approval refusal	0	4	1	0	5
Other	12	16	2	2	32

RRT Decisions – May 2008

Country	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Albania	0	1	0	0	1
Algeria	0	1	0	0	1
Austria	0	1	0	0	1
Bahrain	1	0	0	0	1
Bangladesh	1	5	1	6	13
Cambodia	0	0	0	1	1
China (PRC)	25	71	0	3	99
Croatia	0	1	0	0	1
East Timor	1	0	0	0	1
Egypt	1	2	0	0	3
El Salvador	0	1	0	0	1
Ethiopia	0	2	0	0	2
Fiji	0	2	0	0	2
Ghana	2	1	0	0	3
India	0	13	0	4	17
Indonesia	1	20	0	2	23
Iran	1	0	0	0	1
Kenya	0	1	0	0	1
Korea, Republic Of	0	1	0	0	1
Latvia	0	1	0	0	1
Lebanon	1	3	0	0	4
Malaysia	0	14	0	0	14
Mongolia	1	0	0	0	1
Nepal	1	2	0	0	3
Netherlands	0	1	0	0	1
Nigeria	0	2	0	0	2
Pakistan	1	4	0	0	5
Papua New Guinea	0	1	0	0	1
Peru	0	2	0	0	2
Philippines	1	3	0	0	4
Russian Federation	1	0	0	0	1
Rwanda	1	0	0	0	1
Samoa	0	1	0	0	1
Sri Lanka	0	3	0	0	3
Tanzania	0	1	0	0	1
Thailand	0	1	0	0	1
United States of America	0	1	0	0	1
Uzbekistan	0	2	0	0	2
Vietnam	0	2	0	0	2
Zimbabwe	3	1	0	0	4

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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INDEX

Migration Review Tribunal Cases

Adoption.....	5
Age.....	3
Benefit to Australia.....	3
Change in Circumstances.....	4
Clause 124.211.....	3
Clause 155.212(3).....	6
Clause 421.222.....	4
Clause 421.230.....	4
Clause 445.211.....	5
Clause 457.223.....	2
Clause 857.213(b)(ii)(A).....	4
Condition 8202(3)(b).....	5
Dependent Child.....	5
Employer Nomination.....	2
Holder of a Subclass 421 (Sport) Visa.....	4
Jurisdiction.....	6
Payment of Gazetted Salary.....	2
Policy Intention.....	2
Record of exceptional and outstanding achievement.....	3
Regulation 1.04.....	5
Regulation 1.15A.....	5
Regulation 4.12.....	6
Regulation 5.19(2)(l).....	2
Satisfactory Course Attendance.....	5
Section 104(1).....	4
Section 109(1).....	4
Section 116(1).....	5
Section 140D.....	2
Sponsorship by an approved sponsor.....	2
Ties to Australia.....	6
Valid Marriage.....	5

Refugee Review Tribunal Cases

Anti-Government (China)	9
Anti-Taliban (Pakistan)	10
Catholic (China)	7
Falun Gong (China)	8
Law of General Application (China)	8
Muslim (India)	9
One Child Policy (China)	8
Particular Social Group "Maliks Tribe" (Pakistan)	10
Political Dissident (Burma)	7
Political Opinion (Burma)	7
Political Opinion (China)	8, 9
Political Opinion (Lebanon)	10
Political Opinion (Pakistan)	10
Political Opinion (Russia)	10
Religion (China)	7, 8
Religion (India)	9
Religion (Pakistan)	10
Section 91R(2)	11
Section 91R(3)	8
Section 91S	8
Serious Harm	11
Shia (Pakistan)	10
State Protection (India)	9
Syrian Social Nationalist Party (Lebanon)	10
Unregistered Church (China)	7
Yabloko Party (Russia)	11