



HIGH COURT OF AUSTRALIA

Public Information Officer

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WACB v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS

An asylum seeker was not notified that his application for a protection visa had been rejected until he physically received the written decision, pursuant to section 430 of the Migration Act, the High Court of Australia held today. His 28 days in which to lodge an appeal had therefore not started running until he was given this document.

WACB claimed he was born in Afghanistan in about 1985 and was of Hazara ethnicity. He had no education apart from lessons in the Koran at his local mosque and spent his life tending sheep. His father, who had supported an anti-Taliban group, had disappeared. His mother arranged with a people smuggler for WACB to escape Afghanistan to avoid either the same fate or being drafted to fight for the Taliban. He arrived in Australia by boat in December 2000 and applied for a protection visa. The Immigration Department and the Refugee Review Tribunal refused the application. On 16 March 2001, the RRT faxed its 14-page decision to the Curtin detention centre in Western Australia where WACB was being held. A covering letter explained he had 28 days to seek judicial review by the Federal Court, pursuant to section 478 of the Migration Act. The Curtin manager told him through an interpreter of the refusal and the 28-day appeal period. A Dari-speaking counsellor explained that the RRT did not believe he was an Afghan. According to WACB, she held on to the document until he asked for it weeks later.

He filed his application to the Federal Court on 3 May 2001 for judicial review but the Court held that it was out of time. The Full Court of the Federal Court agreed. WACB then appealed to the High Court.

The Migration Act provides five methods by which applicants may be notified of decisions, depending on whether they are in immigration detention and whether they have a representative. Where an applicant is in detention, as in WACB's case, the RRT must give the applicant and the Department Secretary a copy of the written statement within 14 days of the decision. The High Court held that notification of the decision did not occur until the counsellor gave WACB the written statement. Telling the applicant that the document had arrived or communicating the gist of the document or reading the document to the applicant is insufficient. The written statement must be physically given to the applicant. Only then does the 28-day appeal period begin to run.

The Court, by a 4-1 majority, allowed the appeal, and WACB's substantive application for review can now proceed for hearing and determination.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*