



HIGH COURT OF AUSTRALIA

Public Information Officer

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SAAP AND SBAI v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS AND REFUGEE REVIEW TRIBUNAL

A decision by the Refugee Review Tribunal to uphold the refusal to grant protection visas to Iranian asylum seekers SAAP and SBAI was invalid because it had not fully complied with a mandatory provision of the *Migration Act*, the High Court of Australia held today.

SAAP and SBAI, a mother born in 1956 and her daughter born in 1993, are of the minority pre-Christian Sabian Mandeian faith. They arrived in 2001 by boat from Indonesia, were taken into immigration detention, and sought protection visas on the ground of religious persecution. SAAP's husband and three other children remained in Iran. SAAP is illiterate and speaks little English. Her eldest daughter was already in Australia and had been granted a protection visa. The Immigration Department refused SAAP and SBAI's applications. That decision was affirmed by the RRT, which was not satisfied that their experiences amounted to persecution.

In her visa application, SAAP described incidents of alleged persecution by the Muslim majority, including her children denied admission to school, being prevented from working as a hairdresser, an attempt to abduct the eldest daughter to forcibly convert her to Islam, and her husband losing the sight of one eye from a rock throwing. At the RRT hearing, conducted via video-link, the eldest daughter was asked about these incidents with SAAP out of the room in Woomera and her migration agent present in the hearing room in Sydney. The RRT member asked SAAP about her daughter's responses to questions about SAAP's husband loss of sight and the children's attendance at school. The RRT member said he would write to SAAP about other answers given by her daughter on which he would like to receive written submissions. This did not happen.

Section 424A of the *Migration Act* requires the RRT to give an applicant particulars in writing of any information that the RRT considers would be a reason for affirming the department's decision and to invite the applicant to comment. In the Federal Court, Justice John Mansfield found that the RRT had failed to fulfil these two aspects of section 424A, but held that this failure did not deprive SAAP of the opportunity to learn of material adverse to her claim and to comment on it because her migration agent was present when the daughter gave evidence, the RRT asked SAAP about certain aspects of that evidence and SAAP had the opportunity to make submissions. The Full Court upheld Justice Mansfield's decision declaring that the RRT had not erred in dismissing SAAP and SBAI's claim for protection visas. They appealed to the High Court.

The Court held, by a 3-2 majority, that the RRT failed to comply with section 424A of the Act, which it held set out mandatory steps to accord procedural fairness. The RRT was bound to give SAAP and SBAI written notice of the information it had obtained from the eldest daughter and to ensure as far as reasonably practical that they understood its relevance to the review. Failure to do so gave rise to jurisdictional error, rendering the RRT's decision invalid. The Court ordered that the RRT's decision be quashed and that the RRT review according to law the Immigration Department's decision to refuse SAAP and SBAI protection visas.

- *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.*