



HIGH COURT OF AUSTRALIA

Public Information Officer

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VBAO v MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS AND REFUGEE REVIEW TRIBUNAL

For an asylum seeker to show a well-founded fear of persecution, a threat of harm must mean a real risk of harm, not merely an earlier communication of intention to harm, the High Court of Australia held today.

VBAO is a Sri Lankan national who held an entertainment visa issued to him as a visiting member of a dance troupe sponsored by the Sinhala Cultural and Community Services Foundation. He entered Australia in November 2001. The foundation withdrew sponsorship when it became clear that the troupe was not a troupe of genuine dancers. VBAO applied for a protection visa. He told an Australian official that he wanted to work in Australia to pay off a loan and provide for his family. He also said he was a member of the Sri Lankan Freedom Party, attending and performing at political rallies and organising political meetings. VBAO said his life had been threatened by United National Party members and claimed he would be killed if the UNP, as he expected, came to power in Sri Lanka. He said on his way home from a wedding UNP members pulled him into a van, beat him and cut his hair. He said he had been intentionally struck by a rear-view mirror of a passing van and that eggs had been thrown at him. VBAO said he had lost his job as a musician because of his political involvement, been threatened by UNP members and left his home.

The Immigration Department refused him a protection visa. The Refugee Review Tribunal upheld that decision. It found that VBAO had not been actively involved in politics as his knowledge of Sri Lankan politics was limited. The RRT was prepared to accept that he may have received threatening phone calls and letters and that UNP thugs may have assaulted him after the wedding, but it was not satisfied that these incidents constituted persecution within the Refugees Convention. The RRT said the egg throwing and the collision with the rear-view mirror also did not amount to harm as severe as persecution, assuming they actually occurred. The Federal Magistrates Court reversed the RRT decision, holding that threats, in the sense of statements of intention to harm, amounted to persecution and that VBAO had a fear of future threats. The Federal Court of Australia allowed an appeal by the Minister. VBAO appealed to the High Court.

The Court unanimously dismissed the appeal. VBAO had argued that the phrase “threat ... to life and liberty” in section 91R of the *Migration Act* means a communication of an intention to cause harm. The Minister argued that it means a real risk of harm. The Court held that, depending on context, the word “threat” could mean either a risk or a hostile communication. In the context of the *Migration Act*, and the definition of a fear of persecution in the future, it meant a risk of harm. On the RRT’s finding that there was no such risk, VBAO’s claim must fail.

- *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.*