



## HIGH COURT OF AUSTRALIA

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### SZBYR AND SZBYS v MINISTER FOR IMMIGRATION AND CITIZENSHIP AND REFUGEE REVIEW TRIBUNAL

A family quarrel was not sufficient basis for a well-founded fear of persecution which would enable asylum seekers to be granted refugee status, the High Court of Australia held today.

Indian husband and wife, SZBYR and SZBYS, arrived in Australia in 2002. They are Ismaili Muslims and followers of the Aga Khan, the sect's leader. SZBYR was previously married to a woman named Salima whose family were Muslims of a different sect and a higher social status and were influential in the city of Hyderabad. Despite her family's disapproval, Salima married SZBYR in 1997. He claims to have been falsely arrested and imprisoned by police on a number of occasions between 1997 and 2001 at the corrupt instigation of Salima's family, and suffered other forms of harassment from them, including assault. In 1999, SZBYR agreed to Salima's father's request to divorce her. He married SZBYS in 2000. Salima later allegedly committed suicide. The couple moved to Mumbai where they were charged with murdering Salima and jailed for 15 days until released on bail. They left for Australia using their own passports, despite the charge relating to Salima's death. They say they fear that if returned to India they will be imprisoned due to the outstanding charge and will suffer continued animus from Salima's family.

The couple applied for a protection visa which was refused. They claimed to have a well-founded fear of persecution for reasons of religion within the meaning of the Convention relating to the Status of Refugees. The Immigration Department concluded that the couple's difficulties arose out of SZBYR's relationship with Salima and her family which was a private matter outside the scope of the Convention. The Refugee Review Tribunal refused their applications for review, the Federal Magistrates Court rejected an application for judicial review of the RRT's refusal, and the Federal Court of Australia dismissed an appeal by the couple. The RRT did not consider SZBYR to be a reliable witness. SZBYR and SZBYS appealed to the High Court.

The Court upheld the RRT's finding that the claims lacked any nexus with the Convention. The couple also argued that the RRT had not complied with section 424A of the *Migration Act* which provides that the RRT must give the applicant written particulars of any information that it considers would be the reason, or part of the reason, for affirming a decision under review. This argument was rejected. The Court unanimously dismissed the appeal.

- *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.*