



HIGH COURT OF AUSTRALIA

Public Information Officer

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SIE SOK v MINISTER FOR IMMIGRATION AND CITIZENSHIP AND MIGRATION REVIEW TRIBUNAL

A claim of domestic violence did not have to be raised during initial consideration of an application for a permanent visa but could be raised when a visa refusal was being reviewed by the Migration Review Tribunal (MRT), the High Court of Australia held today.

In August 2002, Sie Sok, a citizen of Cambodia, married an Australian woman who sponsored his applications for a temporary visa and a permanent visa. The temporary visa was granted and Mr Sok entered Australia in November 2002. Permanent visas are not granted for at least two years. A condition for the grant of the permanent visa was that the applicant be the spouse of the sponsor. This required the Minister to be satisfied that the couple had a mutual commitment to a shared life as husband and wife to the exclusion of all others, that the relationship was genuine and continuing, and that they live together or do not live apart on a permanent basis. If the relationship had ceased, an applicant would remain entitled to a permanent visa if they had suffered domestic violence committed by the sponsoring spouse. In March 2005, following an interview by an immigration official and visits to two addresses where Mr Sok and his wife were apparently living, the visa was refused on the ground that the official was not satisfied that Mr Sok was the spouse of the sponsor.

He applied for a review by the MRT. In February 2006, Mr Sok submitted material to the MRT claiming that he had been the victim of domestic violence. The MRT, without inviting Mr Sok to appear to give evidence or make submissions, recorded a finding that it was not satisfied that he had suffered domestic violence. If the MRT was not satisfied that a claimant had suffered domestic violence it could refer the question to an independent expert. The expert's opinion was conclusive. In this case, without hearing Mr Sok, the MRT referred the matter to first one independent expert for an opinion, then to a second expert. Both experts concluded that Mr Sok had not suffered domestic violence. A copy of each opinion was sent to Mr Sok. After he received the first opinion he provided further evidence in support of his claim to have suffered domestic violence. In October 2006, the MRT held a hearing at which Mr Sok adduced evidence and presented arguments in support of his claim. The MRT affirmed the official's decision to refuse him a permanent visa.

Mr Sok applied to the Federal Magistrates Court (FMC) for relief. It declared the MRT's decision to be unlawful, void and of no force and effect, and made orders quashing the decision, prohibiting the MRT and the Minister from giving effect to the decision, and requiring the MRT to rehear the application for review. It held that the MRT was obliged to invite Mr Sok to a hearing before seeking the opinion of an independent expert. The Minister appealed to the Full Court of the Federal Court of Australia, which allowed the appeal. The Full Court held that Division 1.5 of the Migration Regulations relating to domestic violence applied only to the original decision-maker and not to the MRT. It held that a person had to have raised a domestic violence claim when a visa application was considered by the Minister. Mr Sok appealed to the High Court.

The Court unanimously allowed the appeal and upheld the FMC's orders. It held that the MRT must consider a claim of domestic violence made by a visa applicant, even when no such claim was made before the Minister refused to grant the visa. The MRT must invite the applicant for review to appear to give evidence and present arguments before making a decision about whether or not the applicant has suffered domestic violence.

- *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.*