



HIGH COURT OF AUSTRALIA

Manager, Public Information

23 September 2009

MINISTER FOR IMMIGRATION AND CITIZENSHIP v SZIZO & ORS

[2009] HCA 37

Failure by the Refugee Review Tribunal (RRT) to comply with a notification requirement under the *Migration Act* 1958 (Cth) does not necessarily result in an unfair hearing or a denial of natural justice, the High Court held today.

Section 441G of the Migration Act relevantly provides that, if a person applies to the RRT for review of a decision and authorises another person (the authorised recipient) to do things on his or her behalf, including receive documents from the RRT, then the RRT must give the authorised recipient, instead of the applicant, any documents it would otherwise have given to the applicant (including a written invitation to the applicant to attend the RRT hearing of his or her application).

SZIZO and his family arrived in Australia from Lebanon in March 2001. They applied for protection visas on 14 November 2005. The Minister's delegate refused the applications and SZIZO and his family applied to the RRT to review the delegate's decision. On the application form SZIZO nominated his eldest daughter, SZIZQ, as his authorised recipient. SZIZQ's address was the address where all the visa applicants resided, including SZIZO (the family residence). The RRT sent a notice of a hearing to be held on 23 March 2006 and a response form, addressed to SZIZO at the family residence.

SZIZO neither speaks nor reads English. His daughter SZIZQ speaks and reads Arabic, French and English. The response form was completed in English and signed by SZIZO. SZIZO and all his family, including SZIZQ, attended the RRT hearing on 23 March 2006, as did a number of witnesses who gave evidence supporting the family's application. SZIZO and SZIZQ provided further written submissions and supporting documents to the RRT following the hearing. On 6 June 2006 the RRT affirmed the delegate's original decisions. The Federal Magistrates Court dismissed SZIZO's appeal. The Full Court of the Federal Court however found that, in failing to give notice of the hearing to SZIZO's authorised recipient, the RRT had failed to comply with the notification method mandated by section 441G of the Migration Act and had thereby committed a jurisdictional error. The Full Court allowed SZIZO's appeal. The High Court granted special leave to the Minister to appeal the Full Court's decision.

The High Court considered that the notification regime set up in Division 7A of Part 7 of the Migration Act, including section 441G, is designed to ensure that an applicant in the RRT has adequate time to prepare his or her case and is given effective notice of a hearing. The regime provides a *manner* for ensuring an applicant is given effective notice of a hearing, but the manner of so doing is not an end in itself. In the circumstances of this case, where SZIZO and his family were aware of the hearing date, were able to present witnesses in support of their case and were able to provide written submissions after the oral hearing had concluded, the RRT's failure to notify SZIZO's authorised recipient of the hearing date did not result in a denial of natural justice to SZIZO or an unfair hearing, a fact acknowledged by SZIZO's legal representative. In other circumstances the RRT's failure to give a hearing notice to an authorised recipient may result in an applicant not receiving a fair hearing but this was not such a case. The Court allowed the Minister's appeal and ordered that SZIZO's appeal to the Full Court of the Federal Court be dismissed.

- *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.*