



HIGH COURT OF AUSTRALIA

4 November 2015

MINISTER FOR IMMIGRATION AND BORDER PROTECTION v WZARH & ANOR

[2015] HCA 40

Today the High Court unanimously dismissed an appeal from a decision of the Full Court of the Federal Court of Australia. The High Court held that the first respondent was denied procedural fairness in the conduct of an Independent Merits Review ("IMR") of his Refugee Status Assessment ("RSA").

The first respondent is a Sri Lankan national of Tamil ethnicity. He entered Australia by boat in 2010, arriving at Christmas Island. In January 2011, he requested an RSA to determine whether he was a person to whom Australia owed protection obligations under the Refugees Convention. A delegate of the appellant made an adverse assessment of the first respondent's claim to refugee status. In May 2011, the first respondent requested an IMR of the adverse RSA. In January 2012, he was interviewed by an independent merits reviewer. At the interview, the reviewer told the first respondent that she would undertake a re-hearing of his claims and make a recommendation to the appellant as to whether the first respondent was a refugee.

The reviewer became unavailable to complete the IMR and a second reviewer assumed responsibility for its completion. The first respondent was not informed of the change in the identity of the reviewer. The second reviewer, the second respondent in this matter, did not conduct an interview with the first respondent, but based his decision on a consideration of certain materials, including the transcript and an audio recording of the first respondent's interview with the first reviewer. The second reviewer formed an adverse view of the first respondent's credibility, and did not accept that certain inconsistencies in the first respondent's account of his circumstances in Sri Lanka were due to memory lapse or confusion, or the effect of detention. The second reviewer recommended that the first respondent not be recognised as a person to whom Australia owed protection obligations.

The first respondent applied to the Federal Circuit Court of Australia for judicial review of the decision of the second reviewer, arguing that the second reviewer's failure to conduct an interview meant that he was denied procedural fairness. The primary judge dismissed the application. The first respondent appealed successfully to the Full Court of the Federal Court, a majority of which found that the first respondent had a legitimate expectation that the person by whom he had been interviewed would be the person to complete the IMR, and which found that, notwithstanding the change in identity of the reviewer, he was unfairly denied an opportunity to make submissions as to how the IMR should proceed.

By grant of special leave, the appellant appealed to the High Court. The High Court unanimously held that the first respondent was denied procedural fairness. The Court held that procedural fairness required that the first respondent be informed that the IMR process had changed so that he would have an opportunity to be heard on the question of how the IMR should proceed. The appeal was dismissed with costs.

- *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.*