# MINISTER FOR IMMIGRATION AND BORDER PROTECTION v SZVFW & ORS (S244/2017)

Court appealed from: Full Court of the Federal Court of Australia [2017] FCAFC 33

Date of judgment: 2 March 2017

Special leave granted: 14 September 2017

The Protection Visa applicants ("the Visa Applicants") are a Chinese family comprising a husband, wife and their son. The primary claims were made by the husband and related to the alleged compulsory acquisition of his farming land in China. Such was the level of harassment that they suffered, that the Visa Applicants claimed that they decided to flee China.

The husband advised the Appellant's Department ("the Department") that all correspondence concerning their application was to be sent to him at their address in Roselands, NSW. He also expressly stated that the Department was not to contact him by any other means. The husband and wife subsequently failed to attend a Departmental interview, having been notified of that interview by mail to their nominated address. On 16 April 2016 the Delegate refused their application.

The Visa Applicants then made an application to the Refugee Review Tribunal ("the Tribunal") for a review of the Delegate's decision. Similarly, they specified that all correspondence concerning their application was to be sent to the husband at the same Roselands postal address. This was despite their also having provided the Tribunal with both an email address and a phone number. The Visa Applicants subsequently failed to attend the Tribunal hearing, despite their having been notified of it, by mail, to their nominated address.

On 12 September 2014 the Tribunal refused the Visa Applicants' application and a successful application for judicial review to the Federal Circuit Court duly followed. On 19 August 2016 Judge Barnes found that the Tribunal had acted unreasonably in making a final decision without having taken any further action to enable the Visa Applicants to appear before it.

On 2 March 2017 the Full Federal Court (Griffiths, Kerr & Farrell JJ) dismissed the Appellants' subsequent appeal. Their Honours found that Judge Barnes was correct in concluding that her task (in determining whether the Tribunal had acted unreasonably) was an evaluative, not a discretionary one. Her Honour was also correct in concluding that the Tribunal could not have been satisfied that the Visa Applicants were, in a practical sense, aware of the hearing date. The Full Court further found that the husband's direction (on the original Protection Visa application) that he did not want the Department communicating with him by fax, email or any other means was effectively irrelevant. This was because that statement was directed to communications from the *Department*. It said nothing about the receipt of communications from the Tribunal during any subsequent review process.

The grounds of appeal are:

- The Full Court erred in approaching the appeal on the basis that the Minister had to establish an error in the nature of that required by *House v King* (1936) 55 CLR 499*.*

- The Full Court ought to have concluded that the decision of the Tribunal was not legally unreasonable, and that the primary judge's conclusion to the contrary was in error.