HIGH COURT OF AUSTRALIA

Public Information Officer

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NAGV AND NAGW OF 2002 v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS AND REFUGEE REVIEW TRIBUNAL

Australia had an obligation to grant protection visas to a Russian father and son, despite their right to settle in Israel, the High Court of Australia unanimously held today.

NAGV and NAGW arrived in Australia as tourists in 1999 and applied for protection visas, claiming they had a well-founded fear of persecution in the Russian Federation because they were Jewish and because of NAGV's political activities. The Refugee Review Tribunal found the men had a genuine fear of persecution if they were returned to Russia, so were entitled to refugee status. However the RRT affirmed the Immigration Department's decision to refuse to grant them protection visas as Israel was a country in which they would have effective protection under Israel's *Law of Return*, which gives every Jew the right to live there. NAGV's wife is not Jewish (she and their daughter were in Lithuania) and the family rejected the option of moving to Israel, partly because of a concern about discrimination against mixed-marriage families and partly because compulsory military service would conflict with the family's pacifism.

The RRT was not satisfied that these reasons were relevant to the question of whether they would have effective protection in Israel. The Federal Court rejected their application for relief and the Full Court of the Federal Court, by majority, rejected an appeal. The Full Court agreed that the 2000 Full Court decision, *Minister for Immigration and Multicultural Affairs v Thiyagarajah,* relating to an asylum seeker who had been granted refugee status in France then travelled to Australia in a bid for asylum here, was wrongly decided. However the majority concluded that the Full Court should not depart from what had become settled law and that NAGV and NAGW should be denied protection visas. They then appealed to the High Court.

The High Court held that the availability of another country which would accept asylum seekers did not mean Australia did not have protection obligations under the United Nations Refugee Convention. The Court held that the RRT erred in its construction of section 36(2) of the Migration Act, which stated that the criterion for a protection visa is that the applicant is a non-citizen to whom Australia has protection obligations under the Convention. The Minister contended that Australia owed no obligation to provide NAGV and NAGW with asylum because of the availability of a third state – Israel – in which they could live without having a well-founded fear of persecution or facing the risk that they would be sent back to the Russian Federation or to anywhere else where their lives or freedom would be threatened. But the Court held that section 36(2) did not provide for such a qualification on Australia's protection obligations. Although an asylum seeker might have obtained protection elsewhere, Australia still owed protection obligations to them. The Court quashed the RRT's decision to refuse NAGV and NAGW protection visas and ordered that it redetermine their case according to law.

- *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.*

Address: PO Box 6309, Kingston ACT 2604 Telephone: (02) 6270 6998 Facsimile: (02) 6273 3025
e-mail: fhamilton@hcourt.gov.au