



HIGH COURT OF AUSTRALIA

Public Information Officer

6 December 2005

APPLICANT VEAL OF 2002 v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS AND REFUGEE REVIEW TRIBUNAL

A failure to inform a visa applicant of adverse information so that the applicant could have the opportunity to respond led to a denial of procedural fairness, the High Court of Australia held today.

Applicant VEAL and his wife, an Eritrean couple, applied for protection visas in 2001 but were refused. They sought review by the Refugee Review Tribunal. In the meantime the Immigration Department received a letter about VEAL. The letter, which included the author's name and address, said VEAL had admitted being accused of killing a prominent political figure in Eritrea and that VEAL supported and worked for the Eritrean government. The writer asked that the information remain confidential. The department sent the letter to the RRT but the RRT did not tell VEAL about the letter or the allegations in it. It affirmed the decision not to grant protection visas. The RRT, in its written reasons, said it gave no weight to the letter as it had been unable to test the claims. The Federal Court allowed an appeal, but the Minister successfully appealed to the Full Court of the Federal Court. VEAL then appealed to the High Court.

The Court unanimously held that procedural fairness required the RRT to inform VEAL of the existence of the letter and the substance (although not the detail) of its contents before affirming the refusal to grant a visa, although the RRT was correct in this case not to have provided the letter or its author's identity to VEAL. The Court held that because the information was credible, relevant and significant the RRT was required to give VEAL an opportunity to deal with that information. Deciding it could reach the conclusion to withhold a visa on other grounds did not discharge the obligation on the RRT to accord VEAL procedural fairness by giving him an opportunity to respond.

The Court held that the material in the letter did pertain to whether he had a well-founded fear of persecution for reasons covered by the Refugees Convention. The Court held that the application of principles of procedural fairness depend on the particular circumstances of each case, so there are no absolute rules about disclosure of information from an informer or disclosure of the informer's identity to an interested person such as VEAL. In this case, procedural fairness at least required that VEAL know the substance of what was said about him in the letter. It did not however mean that the RRT was bound to give him a copy of the letter, or to tell him who sent it, or even to tell him the allegations were in writing. This balanced the principles of procedural fairness against the public interest in ensuring that informers came forward with information about asylum seekers.

- *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.*