HIGH COURT OF AUSTRALIA

15 December 2010

MINISTER FOR IMMIGRATION & CITIZENSHIP v SZJSS & ORS
[2010] HCA 48

In reviewing the unsuccessful protection visa application of a Nepalese citizen ("SZJSS"), the Refugee Review Tribunal ("RRT") chose to give "no weight" to certain letters provided by SZJSS which appeared to corroborate some of the assertions made by him in support of his application. The RRT also described the giving of certain oral evidence by him as a "baseless tactic".

An application by SZJSS and his wife for judicial review of the decision was dismissed by the Federal Magistrates Court on 11 September 2009. However, the Federal Court allowed an appeal from that decision, and quashed the decision of the RRT. It found that the RRT had fallen into jurisdictional error by failing to give "proper, genuine and realistic consideration" to the letters, and by referring to the giving of certain evidence as a "baseless tactic". The Federal Court also found that the reasons of the RRT gave rise to a reasonable apprehension of bias, by reason of pre-judgment.

The High Court today unanimously upheld an appeal by the Minister against the decision of the Federal Court. It found that the weight to be placed on the letters was a matter on which reasonable minds might come to different conclusions, and that the RRT's preference for other evidence could not be said to entail a jurisdictional error. It held further that the RRT's use of the expression "baseless tactic" did not, in the circumstances, give rise to any jurisdictional error.
On the question of apprehended bias, the Court found that the RRT's use of the expression "baseless tactic" did not provide any foundation for a contention that the RRT pre-judged a central but contestable issue in the matter.

Pursuant to an undertaking given to the Court, the Minister was ordered to pay the costs of the visa applicants.

- *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.*