



## HIGH COURT OF AUSTRALIA

10 April 2013

### SZOQQ v MINISTER FOR IMMIGRATION AND CITIZENSHIP & ANOR [2013] HCA 12

Today the High Court unanimously allowed an appeal from a decision of the Full Court of the Federal Court of Australia, which held that the appellant was not a person to whom Australia owed "protection obligations" for the purposes of the *Migration Act 1958* (Cth) ("the Migration Act").

The appellant is an Indonesian national from Irian Jaya who was active in the Free Papua Movement. In 1973 he was detained and tortured by Indonesian officials and, in 1975, he was seriously injured after being shot by Indonesian soldiers. The appellant was granted temporary entry into Australia in June 1985 and was granted a protection visa in January 1996. While travelling to Indonesia to visit his father in September 1996, the appellant was detained and assaulted by members of the Indonesian military. The appellant escaped and returned to Australia.

Back in Australia, the appellant pleaded guilty to a charge of manslaughter for which he was sentenced in September 2001 to seven years' imprisonment with a non-parole period of two years and six months. The Minister cancelled the appellant's protection visa in March 2003, in accordance with the "character test" provisions of the Migration Act. In December 2008, the Minister determined that it was in the public interest to allow the appellant to make a further application for a protection visa.

A delegate of the Minister considered the application and determined that, although the appellant had a well-founded fear of political persecution should he be returned to Indonesia, Australia owed him no "protection obligations" under the Migration Act because he constituted a danger to the community, having been convicted of a "particularly serious crime". The delegate's determination was affirmed by the Administrative Appeals Tribunal ("AAT"), the Federal Court and the Full Court of the Federal Court.

The determination made by the Minister's delegate and the decisions of the AAT and the courts below proceeded on the footing that because the appellant had been convicted of a "particularly serious crime", Australia owed him no "protection obligations" for the purposes of s 36 of the Migration Act. That was contrary to the 2005 decision of the High Court in *NAGV and NAGW of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 222 CLR 161; [2005] HCA 6. The Court unanimously held that the proceedings in the courts below miscarried. It ordered the AAT to review, according to law, the original decision of the Minister's delegate to refuse the appellant a protection visa.

- *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.*