



HIGH COURT OF AUSTRALIA

Public Information Officer

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MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS v JI DONG WANG

The High Court of Australia today overturned a decision by the Full Court of the Federal Court directing a Refugee Review Tribunal matter be reheard by the same tribunal member because that member had made findings of fact favourable to Mr Wang.

Mr Wang arrived in Australia from China in 1997, claiming persecution as a Protestant Christian after being repeatedly detained for attending unregistered religious meetings rather than worshipping in official churches. He was refused a protection visa. A review by RRT member Kerry Boland confirmed that decision.

The Federal Court dismissed Mr Wang's application for review of Ms Boland's decision. On appeal, the Full Court set aside the decision and ordered that the matter be remitted to the RRT as previously constituted, that is, to be reheard by Ms Boland. The Full Court held that her findings of fact were generally favourable to Mr Wang but deficient in some respects. The Full Court was concerned that Mr Wang might be treated less favourably by other RRT members. At first, the Full Court did not order that Ms Boland review Mr Wang's case, but that if there was a dispute over the constitution of the RRT the parties had liberty to apply for a fresh order. When his matter was not relisted before Ms Boland Mr Wang exercised the liberty to apply and the Full Court ordered that Ms Boland rehear the case. The Minister argued that the Federal Court lacked the power to make this order or that it erred in the exercise of its discretion.

The High Court held that neither Ms Boland nor any other RRT member would be bound by her earlier findings of fact, even if the circumstances of Mr Wang's religious status in China was unchanged. The RRT was required to decide whether a person had a well-founded fear of persecution, a decision to be made on its merits on the basis of information the RRT had before it at the time, not according to earlier findings of fact preserved for the person's benefit. The Federal Court could possibly direct the RRT to correct a legal error or to make a particular finding as a matter of law, but directing the RRT to act on facts found at a previous hearing was not open to it.

The High Court, by a 4-1 majority, held that the orders of the Full Court of the Federal Court should be set aside and substituted with an order to dismiss Mr Wang's application to have Ms Boland conduct another review of his case.

- *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.*