



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### SZAYW v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS AND REFUGEE REVIEW TRIBUNAL

The presence of SZAYW's fellow applicants for protection visas did not breach the requirement that hearings to review visa decisions be heard in private, the High Court of Australia held today.

SZAYW and three other stateless Palestinians arrived in Australia from Lebanon in 1998 and applied for protection visas, claiming that they would be persecuted by Hezbollah or Islamic Jihad if they returned to Lebanon. The men said they had been involved with Hezbollah and had received military training for the purpose of attacking Israel or Israeli interests in South Lebanon. They had lost enthusiasm for the conflict and left, but feared that if they returned they would suffer reprisals for desertion. The Immigration Department refused their applications for protection visas and they sought a review of that decision by the Refugee Review Tribunal. Present at the hearing were migration agents from the Refugee Advice and Casework Service (Australia) and, for part of the time, the girlfriend of one of the men. The RRT member took evidence from one man in the absence of the others. The member then questioned SZAYW and the other two men together as it was apparent to her from questioning the first man that their claims were all based on shared experiences. No objections were raised about the procedure by either the men or their migration agents. The member affirmed the department's decision. She rejected their claims that they had a well-founded fear of persecution and did not accept much of their evidence.

SZAYW complained that the RRT had not complied with section 429 of the *Migration Act* because the RRT hearing was not in private. The complaint was upheld by the Federal Magistrates Court, which held that the non-compliance with section 429 constituted jurisdictional error and quashed the RRT's decision. The magistrate's finding was reversed by the Full Court of the Federal Court, by majority. SZAYW appealed to the High Court, seeking to reinstate the magistrate's decision.

The High Court unanimously rejected the appeal and upheld the decision of the Full Court of the Federal Court. It held that section 429 of the Act must be understood in the context of section 420 which provides that the RRT is a mechanism that is fair, just, economical, informal and quick. The RRT is not bound by technicalities, legal forms or rules of evidence. Circumstances arise in which the practical content of the requirement of privacy will need to allow for the capacity to meet the objectives of fairness, economy and informality. It was to the men's advantage to be questioned in each other's presence as it helped them maintain consistency. SZAYW submitted that only the member, necessary RRT officers, the applicant and their agent should be present when applicants are giving evidence, but the Court held this was an unduly narrow and inflexible interpretation of section 429. The four men were close associates with claims based on shared experiences and were witnesses for each other. They had applied to have their cases heard by the same member and had the same migration agents. There was no suggestion that any of them wished to say something the others should not hear. The Court held that the conduct of the hearing caused no unfairness and was consistent with section 429.

- *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.*