



HIGH COURT OF AUSTRALIA

Manager, Public Information

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MINISTER FOR IMMIGRATION AND CITIZENSHIP v AMIT KUMAR & ANOR

The High Court decided today that the Migration Review Tribunal was not required to disclose to Mr Kumar the identity of the person who provided information it had received concerning his application for a spouse visa.

Mr Kumar was born in Fiji on 14 September 1982. On 8 May 2004 he married Ms Rachel Sunita Krishna at Lidcombe in New South Wales. Ms Krishna is an Australian citizen. On 10 June 2004 Mr Kumar applied for permanent residence in Australia on the basis that he was the spouse of an Australian citizen. The delegate of the Minister for Immigration and Citizenship was not satisfied that Mr Kumar and Ms Krishna were in a genuine and continuing marriage relationship, or that they had a mutual commitment to a shared life as husband and wife. On 29 September 2004 Mr Kumar's application for a spouse visa was refused.

Mr Kumar applied to the Migration Review Tribunal for a review of the delegate's decision. At a hearing before the Tribunal on 31 October 2005 Mr Kumar was given a letter which invited him to comment on information received by the Tribunal in confidence stating that his marriage to Ms Krishna was contrived for the sole purpose of migrating to Australia. Mr Kumar was given 28 days within which to provide any comments about the allegation. At the hearing Mr Kumar denied the allegation but did not provide any further evidence or comments within that 28 day period.

In its reasons dated 3 February 2006 the Tribunal affirmed the delegate's decision. Having regard to financial aspects of the relationship, the nature of the household, social aspects of the relationship and the nature of the commitment between Mr Kumar and Ms Krishna, the Tribunal was not satisfied their relationship was genuine. The Tribunal was also persuaded by the information supplied to it in confidence, which it described as "credible and significant adverse information" that Mr Kumar and Ms Krishna were not in a genuine and continuing spousal relationship.

Mr Kumar's application for review of the Tribunal's decision was dismissed by a Federal Magistrate. However three judges of the Full Court of the Federal Court unanimously upheld his appeal from the Magistrate's decision. They did so on the basis that the Tribunal had failed to disclose to him the identity of the informant and the full nature of the information provided by the informant. They said that this was required by section 359A of the Migration Act. The Minister appealed against the Full Court's decision to the High Court.

Section 359A requires the Tribunal to give to an applicant "particulars of any information that the Tribunal considers would be the reason, or a part of the reason, for affirming the decision ... under review". Sub-section (4) of section 359A states that the requirement to give particulars does not apply to "non-disclosable information". Non-disclosable information is defined to include information whose disclosure would found an action for breach of confidence.

In a unanimous decision the High Court held the Tribunal had complied with the requirement of section 359A when it alerted Mr Kumar to the advice it had received that his marriage had been contrived for the sole purpose of migrating to Australia. The High Court held that the identity of the person who provided the information fell within the definition of “non-disclosable information”.

- *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.*