

WZARV v. MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR (P10/2015)

Court appealed from: Court of Appeal of the Supreme Court of Queensland [2013] QCA 82

Date of judgment: 22 August 2014

Date of grant of special leave: 24 February 2015

The appellant is a Sri Lankan citizen who left Sri Lanka lawfully in July 2010 using his own passport.

On 7 November 2010, he arrived on Christmas Island as an irregular maritime arrival. He claimed to fear harm in Sri Lanka based on his Tamil ethnicity, the fact that he had attended a one-day training program in his village conducted by the LTTE and the suspicions of the authorities that he was an LTTE supporter. He elaborated on the harm he claimed to have experienced in Sri Lanka during his interview with the Independent Merits Reviewer ("the IMR"). After this interview and by letter dated 22 May 2012, the IMR informed the appellant of various suggested inconsistencies in his account and extended an invitation to the appellant to comment on those inconsistencies.

In response, the appellant repeated his claims that the authorities were suspicious of him before he left Sri Lanka and his attempts to seek asylum would raise their suspicions. The appellant's migration agent submitted further country information and emphasised the risks of being a failed asylum seeker.

On 21 September 2012, the IMR recommended that the appellant did not meet either of the criteria for a Protection (Class XA) visa set out in s 36(2)(a) and s 36(2)(aa) of the Act and accordingly that he not be recognised as a person to whom Australia owes protection obligations.

The IMR accepted that the appellant was a Tamil from the Northern Province of Sri Lanka who had departed the country on a valid passport. She believed his claims that he was forced to undergo a day's training with the LTTE, was interned in a Sri Lankan Army camp in 2009 and had been employed by the UNHCR and the Swiss Foundation for Mine Action. She also accepted that it was likely that the appellant would be questioned by Sri Lankan authorities at the airport upon his return, but that country information indicated that such questioning would usually be completed in a matter of hours and that the appellant would not have a profile which indicated he would be suspected of being an LTTE supporter. It follows that she found that the brief detention the appellant was likely to experience whilst undergoing police checks at the airport did not amount to serious harm.

The ground of appeal is:

- His Honour erred in failing to find that the IMR has applied the wrong test pursuant to s 91R(2)(a) of the *Migration Act* 1958 (Cth).