

SZOQQ v MINISTER FOR IMMIGRATION AND CITIZENSHIP & ANOR (S334/2012)

Court appealed from: Full Court of the Federal Court of Australia
[2012] FCAFC 40

Date of judgment: 23 March 2012

Special leave granted: 16 November 2012

The Appellant is an Indonesian citizen who had previously been active in the Free Papua Movement. He arrived in Australia in 1985 by canoe and was granted a protection visa in 1996. After being convicted of numerous crimes (including manslaughter) in 2003, the Appellant's protection visa was cancelled pursuant to s 501(2) of the *Migration Act 1958* (Cth) ("the Act"). In December 2008 however the First Respondent ("the Minister") decided (under s 48B(1) of the Act) to permit him to apply for a fresh protection visa. Despite finding that the Appellant would face a real chance of persecution if he was returned to Indonesia, the Minister's delegate refused to grant him a protection visa. This was after finding, under s 36(2) of the Act, that Australia did not owe the Appellant any protection obligations under Article 33 of the 1951 International Convention relating to the Status of Refugees ("the Convention").

Article 33(1) of the Convention provides that a refugee may not be returned to a territory where his life or freedom would be threatened. Article 33(2) however provides that that benefit may not be claimed by a refugee who, having been convicted of a serious crime, constitutes a danger to the community.

On 2 September 2010 the delegate's decision was affirmed by the Administrative Appeals Tribunal ("AAT") and the Appellant's subsequent appeal to the Federal Court was dismissed by Justice Stone on 4 November 2011. Her Honour held that the AAT was correct in not weighing the danger posed to the Australian community against the severity of the likely consequences against the Appellant if he was returned to Indonesia.

On 23 March 2012 the Full Court of the Federal Court (Flick, Jagot & Barker JJ) unanimously dismissed the Appellant's appeal. Their Honours held that no balancing exercise was to be undertaken, as there was no relationship of proportionality between the relevant provisions. The Full Court found that a refugee simply could not obtain the benefit under Article 33(1) if his or her circumstances fell within Article 33(2).

The grounds of appeal include:

- The Full Court of the Federal Court erred in finding that s 36(2)(a) of the Act imported the exception to non-refoulement in Article 33(2) of the Convention. The Full Court of the Federal Court ought to have found that the Appellant satisfied the criterion for a protection visa referred to in s 36(2)(a) because the Appellant was found to be a refugee within the meaning of Article 1 of the Convention and thereby satisfied a relevant criterion in accordance with the requirements of s 65(1)(a)(ii) of the Act.