MINISTER FOR IMMIGRATION, MULTICULTURAL AFFAIRS AND CITIZENSHIP v SZRNY & ANOR (S65/2014)

Court appealed from:	Full Court of the Federal Court of Australia [2013] FCAFC 104
Date of judgment:	11 September 2013
Special leave granted:	14 March 2014

SZRNY is a Pakistani citizen who arrived in Australia on a temporary business visa in February 2010. He then applied for a protection visa, which was refused by a delegate of the Appellant ("the Minister") in June 2010. An unsuccessful review of that decision by the Refugee Review Tribunal ("RRT") was later set aside by consent by the Federal Magistrates Court.

Upon reconsidering the delegate's decision, the RRT again affirmed it on 12 March 2012. On that same day, and in purported compliance with obligations imposed on it by the *Migration Act* 1958 (Cth) ("the Act"), the RRT sent a copy of its second decision to both the Secretary of the Minister's Department ("the Secretary") and to SZRNY. The latter's copy however was mistakenly posted to his previous address instead of to the last address he had provided to the RRT. On 28 May 2012 the RRT eventually carried out its obligation under the Act by posting a copy of its decision to SZRNY's correct address.

Meanwhile, on 24 March 2012 a "complementary protection ground" was introduced by s 36(2)(aa) of the Act, for the benefit of non-citizens without refugee status who would nevertheless face a risk of harm if they were deported from Australia. That ground was available to any applicant for a protection visa whose application had not been finally determined before 24 March 2012.

SZRNY sought judicial review of the RRT's second decision in the Federal Circuit Court. On 7 May 2013 Judge Barnes set that decision aside. Her Honour held that SZRNY's application had not been "finally determined" within the meaning of s 5(9) of the Act until 28 May 2012. This was on the basis that it was essential for a RRT's decision to be communicated to the relevant review applicant. Judge Barnes then remitted the matter to the RRT, for it to give SZRNY an opportunity to address the complementary protection ground.

On 11 September 2013 the Full Court of the Federal Court by majority (Griffiths & Mortimer JJ; Buchanan J dissenting) dismissed the Minister's appeal. The majority held that the review of SZRNY's visa application had not been finally determined until the RRT had notified him of its decision, as informing him was an important element of the review scheme. Justice Buchanan however found that the review process was at an end once the RRT's decision had been dispatched to the Secretary and to SZRNY's incorrect address, as the decision was then beyond further review by the RRT. That status was not affected by the outstanding obligation on the RRT to send its decision to SZRNY's correct address.

The grounds of appeal include:

- The Full Court erred in holding that SZRNY's visa application had not been "finally determined", within the meaning of s 5(9) of the Act, even though the RRT had sent copies of the statement prepared pursuant to s 430(1) outside of the RRT, including to the Secretary: Judgment [84], [92].

- The Full Court erred in holding that a visa application will not be finally determined until both a review applicant and the Secretary have been notified of the RRT's decision in accordance with the Act, even if they have received actual notification of the decision: Judgment [84], [98].