



HIGH COURT OF AUSTRALIA

13 December 2012

TAHIRI v MINISTER FOR IMMIGRATION AND CITIZENSHIP

[2012] HCA 61

Today the High Court held that a delegate of the Minister for Immigration and Citizenship did not err in refusing a combined application for a Subclass 202 Refugee and Humanitarian (Class XB) visa by the plaintiff's mother and her four dependent children.

The plaintiff is a citizen of Afghanistan. He arrived unaccompanied in Australia as a 17-year-old and was granted a protection visa. The plaintiff proposed his mother's application for a visa with four of her children as additional applicants. The mother and the four children are citizens of Afghanistan living in Pakistan. The children's father has been missing since 2003. The criteria for granting the combined application included satisfaction of public interest criterion 4015 ("PIC 4015"). PIC 4015 relevantly required the delegate to be satisfied either that the law of the children's home country permitted their removal, or that each person who could lawfully determine where the children were to live consented to the grant of the visa. The delegate found that the children's home country was Afghanistan and was not satisfied that the law of Afghanistan permitted the removal of the children. The delegate also found that the persons who could lawfully determine where the children were to live included the children's father, or (if he was dead) his relatives, and was not satisfied that any of them consented to the grant of the visa. In a proceeding commenced in the original jurisdiction of the Court, the plaintiff sought to have the delegate's decision quashed and the defendant compelled to determine the visa application according to law. Under the rules of the Court, the parties agreed to submit a special case stating questions of law for the opinion of the Full Court.

The High Court held that the delegate's factual conclusions were reasonably open and that the plaintiff failed to establish that the delegate proceeded on an incorrect legal understanding of PIC 4015. It also held that although the delegate may have taken into account certain material not disclosed to the plaintiff's mother, that material was not shown to be adverse in any sense requiring its disclosure in accordance with obligations of procedural fairness.

- *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.*