



## HIGH COURT OF AUSTRALIA

27 June 2014

### FTZK v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR

[2014] HCA 26

Today the High Court unanimously allowed an appeal against a decision of the Full Court of the Federal Court of Australia and held that the Administrative Appeals Tribunal ("the AAT") committed jurisdictional error in affirming the decision of the Minister for Immigration and Border Protection ("the Minister") to refuse the appellant a protection visa.

The appellant, a national of the People's Republic of China ("the PRC"), applied for a protection visa under s 36 of the *Migration Act* 1958 (Cth) ("the Act"), claiming to be a person in respect of whom Australia owed protection obligations under the Refugees Convention ("the Convention"). In refusing the appellant a protection visa, the Minister found that notwithstanding that the appellant was a refugee within the meaning of Art 1A(2) of the Convention, he was excluded from protection under the Convention by Art 1F(b) on account of his alleged involvement in the crimes of kidnapping and murder in the PRC in 1996. Article 1F(b) provides that the Convention shall not apply to any person with respect to whom there are serious reasons for considering that he or she has committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee.

In the exercise of its review function, the AAT applied Art 1F(b) to affirm the Minister's decision. The AAT recorded that it was not in dispute that the crimes alleged against the appellant were serious non-political crimes for the purposes of Art 1F(b). The AAT was satisfied, on the basis of several findings, that there were serious reasons for considering that the appellant had committed serious non-political crimes. An appeal against the orders made by the AAT to the Full Court of the Federal Court of Australia was dismissed. By grant of special leave, the appellant appealed to the High Court.

The High Court unanimously held that the reasons of the AAT revealed jurisdictional error. The factors relied upon by the AAT were not logically probative of the appellant having committed one or more of the crimes alleged. Accordingly, the AAT misconstrued the test it had to apply. The Court quashed the AAT's decision and ordered that a differently constituted AAT review the Minister's decision according to law.

- *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.*