



HIGH COURT OF AUSTRALIA

17 June 2015

MINISTER FOR IMMIGRATION AND BORDER PROTECTION v WZAPN & ANOR
WZARV v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR

[2015] HCA 22

Today the High Court unanimously allowed an appeal from the Federal Court of Australia in *Minister for Immigration and Border Protection v WZAPN* and unanimously dismissed an appeal from the Federal Court in *WZARV v Minister for Immigration and Border Protection*. The High Court held that the likelihood of a period of temporary detention of a person for a reason mentioned in the Refugees Convention is not, of itself and without more, a threat to liberty within the meaning of s 91R(2)(a) of the *Migration Act* 1958 (Cth) ("the Act").

WZAPN and WZARV both claimed refugee status upon arrival in Australia. WZAPN is a stateless Faili Kurd whose former place of habitual residence is Iran. In 2010, he was denied refugee status by a refugee status assessment ("RSA") officer. An Independent Merits Reviewer ("IMR") reviewed the decision of the RSA officer and concluded, among other things, that the real chance of short periods of detention upon WZAPN's return to Iran did not constitute serious harm for the purposes of the Act. The Federal Magistrates Court of Australia (as it then was) dismissed WZAPN's application for judicial review of the IMR's decision. WZAPN's appeal to the Federal Court was allowed on the basis that the threat of a period of detention constitutes serious harm whatever the severity of the consequences for liberty. The Federal Court also held that the IMR's decision was vitiated by a want of procedural fairness. The Minister was granted special leave to appeal to this Court from the decision of the Federal Court.

WZARV is a Sri Lankan citizen of Tamil ethnicity, who in 2011 was denied refugee status by an RSA officer. With respect to the possible detention of WZARV upon return to Sri Lanka, the IMR accepted that it was likely WZARV would be interviewed by Sri Lankan authorities upon arrival at the airport, but that it is usual for such questioning to be completed in a matter of hours. WZARV's application for judicial review to the Federal Circuit Court of Australia and appeal to the Federal Court were dismissed. By grant of special leave, WZARV appealed to the High Court on the ground that, on the construction of s 91R(2)(a) of the Act adopted by the Federal Court in the *WZAPN* proceedings, the IMR had erroneously concluded that WZARV did not face serious harm upon return to Sri Lanka.

The High Court held that the question of whether a risk of the loss of liberty constitutes "serious harm" for the purposes of s 91R requires a qualitative evaluation of the nature and gravity of the apprehended loss of liberty. The Court also held that the IMR's decision regarding WZAPN's claims was not vitiated by a want 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.*