



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### SZFDE, SZFDF, SZFDG AND SZFDH v MINISTER FOR IMMIGRATION AND CITIZENSHIP AND REFUGEE REVIEW TRIBUNAL

A Lebanese family seeking asylum in Australia should have their case reconsidered by the Refugee Review Tribunal after they were defrauded into not appearing before the RRT, the High Court of Australia held today.

The family arrived in Australia in February 2002. The wife, SZFDE, claimed a well-founded fear of persecution by reason of her published views questioning the position of women in the Islamic tradition. The Immigration Department refused to grant the family protection visas and they sought a review by the RRT. According to the family, Fahmi Hussain represented himself to be a solicitor and licensed migration agent. In fact, the Council of the Law Society of New South Wales had cancelled his practising certificate in December 2001 and the Migration Agents Registration Authority had cancelled his registration in March 2002. He was struck off the Roll of Legal Practitioners in NSW in February 2005. SZFDE paid Mr Hussain \$8,400 for him to act for the family and lent him another \$5,000. She followed his advice not to accept the RRT's invitation to attend a hearing. Mr Hussain told her he would instead write to the Minister and that if she appeared at the hearing she may say something conflicting with what he wrote. He also told SZFDE that she would be refused anyway as no visa applications were being accepted. Mr Hussain wrote to the Minister seeking a favourable decision but his requests were rejected.

In October 2003, the RRT affirmed the Immigration Department decision. It noted that SZFDE had not appeared before it and there were matters the RRT would have wished to explore with her. In December 2005, the Federal Magistrates Court upheld the family's application for judicial review and found that the family had been dissuaded from appearing before the RRT by Mr Hussain's fraud. It quashed the RRT's decision and remitted the matter for reconsideration. In October 2006, the Full Court of the Federal Court, by a 2-1 majority, allowed an appeal by the Minister. The family then appealed to the High Court.

The Court unanimously allowed the appeal. It held that on the evidence fraud had been perpetrated on the RRT as well as upon the family. Therefore, the jurisdiction of the RRT remained unexercised and the Federal Magistrates Court was correct to grant the writ of certiorari to quash the RRT's decision and the writ of mandamus to compel the RRT to redetermine the review of the Immigration Department's refusal of the family's visa applications. The High Court held that Mr Hussain's conduct had the effect of stultifying the operation of the legislative scheme for the review of refugee decisions and denying the family natural justice. The RRT's redetermination would include a fresh invitation to the family to appear before it.

- *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.*