



## HIGH COURT OF AUSTRALIA

Manager, Public Information

26 August 2009

MINISTER FOR IMMIGRATION AND CITIZENSHIP v SZKTI & ANOR [2009] HCA 30  
MINISTER FOR IMMIGRATION AND CITIZENSHIP v SZLFX & ANOR [2009] HCA 31

The High Court today held that the Refugee Review Tribunal (RRT) may, under section 424(1) of the *Migration Act* 1958 (Cth), get information, relevant to a review, by telephone without first sending a written invitation. Procedural restrictions on the specific power to invite a person to give additional information contained in sections 424(2) and (3), and 424B of the Act do not apply to the general power, contained in section 424(1) of the Act, to get any information the RRT considers relevant.

The Minister's appeals in relation to SZKTI and SZLFX were heard together by the High Court because both cases concerned the issue of whether the RRT may obtain information by telephone from a person without writing to that person to invite him or her to provide the information.

SZKTI arrived in Australia on 23 April 2006 and applied for a protection visa one month later. He claimed to fear persecution in China because he is a member of a religious group which the Chinese Communist Party refers to as the 'Shouters', but which its members call the 'Local Church'. He alleged that if he returned to China he would be arrested because of his membership of the Local Church. The Minister's delegate refused to grant SZKTI a protection visa and he applied to the RRT for review of the delegate's decision. SZKTI provided information concerning his membership of the Local Church in Australia to the RRT, including mobile phone contact details for an Elder of the Local Church. The RRT rang the Elder and obtained certain information which, in the RRT's view, tended to indicate that SZKTI had not been an adherent of the Local Church in China and had only commenced attending the Local Church following his arrival in Australia. The RRT notified SZKTI of the information provided by the Local Church Elder and the preliminary conclusions the RRT had drawn from it, and invited SZKTI to comment on the information. Having considered the evidence, including SZKTI's response to the invitation to comment, the RRT affirmed the delegate's decision to refuse the protection visa. A Federal Magistrate dismissed SZKTI's appeal, however the Full Court of the Federal Court allowed an appeal and ordered the RRT to reconsider the original application for review. The High Court granted the Minister special leave to appeal.

SZKTI argued that, when obtaining the information from the Local Church Elder, the RRT was obliged by sections 424(2) and (3), and 424B of the Act to give, in one of the ways specified in section 441A of the Act, a written invitation to the Elder to provide the requested information. He argued that when the RRT obtained the information via a phone call, it failed to comply with those obligations. The High Court however accepted the Minister's submissions that section 424(1) of the Act empowered the RRT to "get any information" that it considered relevant without limiting the ways in which the RRT might get the information. Section 424(2) was concerned with how information should be obtained in the specific circumstance when a person was "invited ... to give additional information".

In the view of the Court the RRT, when it called the Local Church Elder to make enquiries about SZKTI, had not breached its obligations in relation to the way in which it may obtain information. The Court also held that the information provided by the Local Church Elder did not raise new issues requiring a further hearing under section 425 of the Act. The High Court allowed the Minister's appeal and reinstated the RRT's decision to affirm the decision to refuse SZKTI's application for a protection visa.

SZLFX arrived in Australia on 16 October 2002, on a student visa. He was arrested in March 2007 because his student visa had expired. SZLFX applied for a protection visa on 10 April 2007, claiming to fear persecution if he returns to China because he is a Falun Gong practitioner. In his application SZLFX described having started to practise Falun Gong with a group of practitioners every morning in Belmore Park in Sydney in January 2005. He stopped practising for a period but took it up again and continued to practise thereafter. The Minister's delegate refused to grant SZLFX a protection visa and SZLFX applied to the RRT for review of the delegate's decision. Before the RRT hearing an RRT employee telephoned regarding Belmore Park Falun Gong activities and filed a note recording the details of the call. SZLFX was not notified of the existence of the file note. The RRT affirmed the delegate's decision, however a Federal Magistrate allowed SZLFX's appeal. The Full Court of the Federal Court followed the Full Court's decision in *SZKTI v Minister for Immigration & Citizenship* concerning the RRT's obligation to obtain information in the manner set out in sections 424(2) and (3), and 424B of the Act and dismissed the Minister's appeal. The Minister sought and obtained special leave to appeal to the High Court.

For the reasons set out in relation to the case of SZKTI, the Court held that the RRT had not breached its obligations in relation to the way it obtains information. The Court also held that the RRT had not breached section 424A of the Act in respect of giving notice of adverse information. The High Court allowed the appeal and reinstated the RRT's decision to affirm the delegate's refusal of a protection visa for SZLFX.

- *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.*