



HIGH COURT OF AUSTRALIA

2 February 2011

MINISTER FOR IMMIGRATION & CITIZENSHIP v SZGUR & ANOR

[2011] HCA 1

The Refugee Review Tribunal ("RRT") made adverse credibility findings against SZGUR, an applicant for a protection visa. The RRT sent SZGUR a letter inviting him to comment on or respond to inconsistencies and contradictions in information provided by him during the application and review process. In response, SZGUR's migration agent suggested that the inconsistencies and contradictions may have been related to SZGUR's alleged mental health problems, and requested that the RRT "arrange independent assessment of [SZGUR's] mental health, if required". Section 427(1)(d) of the *Migration Act 1958* (Cth) relevantly empowered the RRT to require the Secretary to arrange for a medical examination. The RRT did not request the arranging of any such examination, and refused SZGUR's visa application. An application to the Federal Magistrates Court for judicial review was dismissed. On appeal to the Federal Court, Rares J held that the RRT failed to consider the agent's request, and that this failure constituted a constructive failure to exercise jurisdiction.

Today the High Court allowed an appeal by the Minister against the decision of the Federal Court. It held that there was insufficient evidence to indicate that the RRT had failed to consider the agent's request. The Court also took the view that the relevant provisions of the Act did not create any general obligation on the RRT to consider whether to exercise the power in s 427(1)(d).

Pursuant to an undertaking given to the Court, the Minister was ordered to pay SZGUR's costs.

- *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.*