FEDERAL COURT OF AUSTRALIA

Seo v Minister for Immigration & Multicultural Affairs [2001] FCA 1258

MIGRATION – protection visa – Refugee Convention – well-founded fear of persecution – whether alleged discrimination on religious grounds prevented applicant from obtaining public service employment – "consider" – whether such discrimination constitutes a Convention reason -

Migration Act 1958 (Cth), s 29, 36, 45, 47, 55, 65, 412, 414, 415, 475, 476, 485, 486

Migration Regulations 1994, Sch 2 – 866.221

Paramananthan v Minister for Immigration and Multicultural Affairs (1998) 94 FCR 28 referred to

Thalary v Minister for Immigration and Ethnic Affairs (1997) 73 FCR 437 cited

Chan Yee Kin v Minister for Immigration and Ethnic Affairs (1989) 169 CLR 379 cited

Prahastono v Minister for Immigration and Multicultural Affairs (1979) 77 FCR 260 cited

Minister for Immigration and Multicultural Affairs v Anthonypillai [2001] FCA 274 cited

Chen Shi Hai v Minister for Immigration and Multicultural Affairs (2000) 201 CLR 293 cited

Applicant A v Minister for Immigration and Ethnic Affairs (1997) 190 CLR 225 cited

Ram v Minister for Immigration and Ethnic Affairs (1995) 57 FCR 565 cited

Annual Report on International Religious Freedom 1999

The International Bill of Human Rights, Article 23

DAL SEOG SEO and HYE JIN KIM v MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS

V 961 of 2000

SPENDER J

BRISBANE (heard in Melbourne)

7 SEPTEMBER 2001

IN THE FEDERAL COURT OF AUSTRALIA	
VICTORIA DISTRICT REGISTRY	V 961 OF 2000

BETWEEN:	DAL SEOG SEO FIRST APPLICANT
	HYE JIN KIM SECOND APPLICANT
AND:	MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS RESPONDENT

JUDGE:	SPENDER J
DATE OF ORDER:	7 SEPTEMBER 2001
WHERE MADE:	BRISBANE (heard in Melbourne)

THE COURT ORDERS THAT:

The application be dismissed with costs, to be taxed if not agreed.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

IN THE FEDERAL COURT OF AUSTRALIA	
VICTORIA DISTRICT REGISTRY	V 961 OF 2000

BETWEEN:	DAL SEOG SEO APPLICANT
	HYE JIN KIM SECOND APPLICANT
AND:	MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS RESPONDENT

JUDGE:	SPENDER J
DATE:	7 SEPTEMBER 2001
PLACE:	BRISBANE (heard in Melbourne)

REASONS FOR JUDGMENT

1 Section 29 of the *Migration Act 1958* (Cth) (the Act) provides that subject to the Act, the respondent ('the Minister') may grant a non-citizen permission, to be known as a visa, to travel to and enter Australia, to remain in Australia, or to do both. Section 65 of the Act provides that if, after considering a valid application for a visa the Minister is satisfied of the matters specified in the section, the Minister is to grant the visa, or, if not so satisfied is not to grant the visa. One of the matters specified in s 65 is that the criteria for the visa specified by the Act or the Regulations have been satisfied. Section 36 of the Act provides that a criterion for the grant of a protection visa is that the applicant for it is a non-citizen in Australia to whom Australia has protection obligations under the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951, as "amended" by the Protocol Relating to the Status of Refugees done at New York on 31 January 1967 (together referred to as "the Convention"). Australia is a party to the Convention.

2 Article 1A(2) of the Convention provides that a refugee is any person who:

"owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

3 Criteria to be satisfied by an applicant for a protection visa at the time of the decision on the application also includes the criterion which is specified in cl 866.221 of Schedule 2 to the Migration Regulations 1994:

"The Minister is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention."

4 Dal Seog Seo (the applicant) and his wife Hye Jin Kim are citizens of the Republic of Korea. They arrived in Australia on 30 November 1999. On 11 January 2000 they lodged an application for protection (Class XA) visas with the Department of Immigration and Multicultural Affairs, under the Act. Visa Class XA includes two subclasses: 785 (temporary protection) which is a temporary visa, and 866 (protection) which is a permanent visa. On 23 February 2000 a delegate of the Minister refused to grant protection (Class

XA) visas, and on 23 March 2000 the applicants applied to the Refugee Review Tribunal (the RRT) for review of that decision. The RRT on 10 November 2000 affirmed the decision of the delegate not to grant protection visas. The RRT's decision was a "judicially reviewable decision" (par 475(1)(b) of the Act). The applicant is entitled to apply to the Court for review of that decision on certain grounds (s 476). The Court has jurisdiction provided by Part 8 of the Act, but no other jurisdiction with respect to that decision (ss 485, 486).

5 The applicant's case is that he is in Australia, outside the country of his nationality the Republic of Korea, and he is unwilling to return to it because of a well-founded fear of being persecuted for reason of his religion. He is thus within cl 866.221, and thus entitled to a protection visa.

6 The RRT noted that the applicant claimed at the hearing before it that:

"He joined the Elijah Gospel Church in 1986 when he was 21 years of age, and his wife joined in 1983. He left Korea because his religion prevents him from working on Saturdays and so he cannot get a normal job in Korea. Despite doing well at university, he could not sit for the public service examination because it was held on a Saturday. From 1994 until 1997 he worked for no pay at the Elijah Gospel School, teaching mathematics. His family supported him financially throughout this time, but in November 1997 they said they could no longer support him. He looked for work in both the private and public sectors, but could not find a job that allowed him to observe his Sabbath. His parents continued to support him. In Australia he has been able to find work that does not require him to work on Saturdays."

(emphasis added)

7 Under the heading *"Findings and Reasons"*, the RRT said:

"Briefly stated, the applicant's claims to refugee status are that as a member of the Elijah Gospel Mission he has suffered mistreatment in the past in Korea and that he faces further mistreatment if he returns to Korea. His central claims were that he was mistreated during his military service because of his religion, and that he will be unable to find normal work in Korea because of this history and because his religion demands that he observe the Sabbath."

(emphasis added)

The RRT stated its findings plainly:

"I accept the applicant's oral evidence, supported by documentary evidence before me, that he and his wife are both followers of the Elijah Gospel Mission. I accept that

his family disapproved strongly of his religious beliefs, but that they nonetheless supported him financially over many years. I accept that from1994 until 1997 he worked on a voluntary basis as a teacher within his church, that his family supported him during those years, and that despite their disapproval they continued their support after that time. I also accept the oral and documentary evidence before me that at times the applicant's religion has been criticised in the media in Korea, where there is some societal disapproval of that religion. However I do not accept that the applicant has been subjected in Korea to treatment amounting to persecution because of his religion, or that he now faces a real chance of being subjected to such mistreatment if he returns there." (emphasis added)

In support of those findings, the RRT said:

"…there is no independent evidence before me that followers of their religion are subjected in Korea to mistreatment amounting to persecution because of their religion."

8 The RRT referred to independent evidence from the *Annual Report on International Religious Freedom 1999* which in relation to religions in South Korea stated:

"…The Constitution provides for freedom of religion, and the Government respects this right in practice. There is no state religion, and the Government does not subsidise or favour a particular religion.

…"

9 The RRT said:

"On the basis of this independent evidence I find that freedom of religion is protected in South Korea in both law and practice …"

10 As to the claims by the applicant that he had been imprisoned for about two months and hospitalised for about three months, the RRT said:

"…I am not satisfied that such problems during his military service in late 1986 and early 1987 now form the foundation of a well-founded fear of persecution if he returns to Korea."

Moreover, the RRT found:

"…I am not satisfied that he will be unable to find 'normal work' in Korea or that, even if this were so, it amounts to persecution in the Convention sense …"

11 Concerning the difficulties in observing a Sabbath in a commercial and competitive society that demands work, 7 days a week, the RRT said:

In the Tribunal's view, there is no reasonable evidence before it that the applicant could not find some type of work in Korea that would allow him to practise his religion and observe his Sabbath. The fact that he has been a follower of the religion since 1986 and managed to survive financially supports this conclusion. The fact that he might not be able to work in his preferred type of work does not in itself represent persecution in the Convention sense. While serious discrimination in, or denial of, employment may amount to persecution in a particular case (as discussed in Prahastono v MIMA (1997) 77 FCR 260) I am not satisfied on all the evidence before me that such is the case here."

12 I take the reference to not being able to work in *"his preferred type of work"*, to be a reference to working as a statistician or mathematician, and not as a reference to working in the public service as compared with working other than in the public service.

13 The contention of the applicant is that the RRT did not consider whether chronic discrimination constituted by excluding from government public service employment in Korea persons of the Elijah Gospel Mission could amount to persecution. The claim is that the RRT did not turn its mind to consider whether there was in fact the situation that public service employment in Korea was dependent on sitting for exams on Saturday and that, as a consequence of that requirement, people who could not sit for exams on Saturday for reasons of religious conviction were prevented from joining the public service, and that such exclusion amounted to persecution for a religious reason.

14 Relying on observations by Merkel J in *Paramananthan v Minister for Immigration and Multicultural Affairs (1998) 94 FCR 28* particularly at 63-64, it was submitted that the RRT, as an inquisitorial tribunal, was obliged to determine the substantive issues that were raised by the material in evidence before the RRT.

15 It should be said that the present claim of persecution was not expressly articulated before the RRT. Nonetheless, the applicant contends that, the applicant's submission having been raised in the material, it was necessary for the RRT to consider it.

16 The submission on behalf of the applicant was not that the RRT was in error in not finding that there was exclusion from public service employment on account of religion, which exclusion amounted to persecution on the ground of religion and therefore there was a well-founded fear of persecution on the ground of religion; it is that that issue was not considered by the RRT and it should have been, and that the failure to consider it constituted an error of law.

17 The rejection by the RRT of the "central claims" of the applicant is not the subject of challenge in this application. Integral to the submission that is made is that there was material which factually raised the question of whether there was exclusion from public service employment in Korea on the ground of religion and, that being so, it was said that it was therefore necessary for the

RRT to consider that question specifically and to make a finding of whether that discrimination amounted to persecution.

18 Having regard to ss 45, 47, 55, 65, 412, 414 and 415 of the Act, the RRT has an obligation to consider the application. The Full Court in *Minister for Immigration and Multicultural Affairs v Anthonypillai* [2001] FCA 274 said at pars 70 to 72, and par 78:

"…that the Tribunal must 'consider' a valid application for a visa …. The word 'consider' is defined in the Oxford English Dictionary, in part, as:

> 'to view or contemplate attentively … examine … scrutinise … to fix the mind upon … to reflect upon'.

It is precisely that obligation which s 414 imposes, albeit indirectly, upon the Tribunal. If the Tribunal fails to discharge that obligation that does not, of itself, give rise to a right of review in this Court. However, if the Tribunal fails to discharge that obligation by reason of any of the grounds set out in s 476(1), there is such a right of review ….

…it seems to us that there is some scope, albeit limited, for the argument that the Tribunal may, in a particular case, have failed to 'review' the decision of the Minister … we accept that there may be some cases where it can properly be said that the Tribunal has not in truth 'considered' the application for a visa at all."

It was submitted that in the present case, the failure of the RRT to deal in detail with the *de facto* exclusion of members of the Elijah Gospel Mission from the public service in Korea, is so serious that the Tribunal must be taken not to have "considered" the application within the sense discussed by the Full Court in *Anthonypillai.*

19 It is clear that in some circumstances discrimination in employment on the ground of religion can amount to persecution. *The International Bill of Human Rights*, Article 23, declares that everyone has a fundamental right to earn a livelihood. Breach of a fundamental right may amount to persecution: Cole and Hathaway*, The Law of Refugee Status 1991* at pp 104-105. Mansfield J in *Thalary v Minister for Immigration and Ethnic Affairs* (1997) 73 FCR 437 at 448 noted:

"In the Office of the United National High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status (1992) at p 15, reference is made to discrimination of a substantially prejudicial nature for the person concerned, for example, 'serious restrictions on his right to earn his livelihood …'. Chapter 4 of Professor Hathaway's book The Law of Refugee Status (1st ed, 1991), discusses the nature of persecution at some length esp at pp 116-124. Included in the 'basic and inalienable rights' are those in Arts 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (United Nations General Assembly, Resolution 2200 A (XXI), 16 December 1966) protecting the right to work, including just and favourable conditions of employment remuneration and rest."

20 In *Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379, Mason CJ said at 388

"The Convention and the Protocol do not define the words 'being persecuted' in Art. 1A(2). The delegate was no doubt right in thinking that some forms of selective or discriminatory treatment by a State of its citizens do not amount to persecution. When the Convention makes provision for the recognition of the refugee status of a person who is, owing to a well-founded fear of being persecuted for a Convention reason, unwilling to return to the country of his nationality, the Convention necessarily contemplates that there is a real chance that the applicant will suffer some serious punishment or penalty or some significant detriment or disadvantage if he returns. … The denial of fundamental rights or freedoms otherwise enjoyed by nationals of the country concerned may constitute such harm, although I would not wish to express an opinion on the question whether any deprivation of a freedom traditionally guaranteed in a democratic society would constitute persecution if undertaken for a Convention reason."

McHugh J also dealt with the measure of discrimination sufficient to constitute persecution at 429-431:

"… But not every threat of harm to a person or interference with his or her rights for reasons of race, religion, nationality, membership of a particular social group or political opinion constitutes 'being persecuted'. The notion of persecution involves selective harassment. … As long as the person is threatened with harm and that harm can be seen as part of a course of systematic conduct directed for a Convention reason against that person as an individual or as a member of a class, he or she is 'being persecuted' for the purposes of the Convention. The threat need not be the product of any policy of the government of the person's country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution …Moreover, to constitute 'persecution' the harm threatened need not be that of loss of life or liberty. Other forms of harm short of interference with life or liberty may constitute 'persecution' for the purposes of the Convention and Protocol. Measures ' in disregard' of human dignity may, in appropriate cases, constitute persecution: Weis, 'The Concept of the Refugee in International Law', Journal du Droit International, (1960), 928, at p. 970. Thus the U.N.H.C.R. Handbook asserts that serious violations of human rights for one of the reasons enumerated in the definition of refugee would constitute persecution: par. 151. In Oyarzo v. Minister of Employment and Immigration [1982] 2 F.C. 779, at p. 783 the Federal Court of Appeal of Canada held that on the facts of that case loss of employment because of political activities constituted persecution for the purpose of the definition of 'Convention refugee' in the Immigration Act 1976 (Can.), s. 2(1). The Court rejected the proposition that persecution required deprivation of liberty [1982] 2 F.C., at p. 782. It was correct in doing so, for persecution on account of race, religion and political opinion has historically taken many forms of social, political and economic discrimination. Hence, the denial of access to employment, to the professions and to education or the imposition of restrictions on the freedoms traditionally guaranteed in a democratic society such as freedom of speech, assembly, worship or movement may constitute persecution if imposed for a Convention reason: Goodwin-Gill, pp. 38 et seq." (emphasis added)

21 In *Thalary* (supra), a secondary school teacher contended that her Christian faith precluded her from obtaining employment in government schools and the public sector generally. The matter was remitted to the RRT by Mansfield J because of the absence of necessary findings. The RRT had concluded that discrimination constituted by the preclusion or substantial inhibition of the applicant's eligibility for employment in the public sector because of her religion and/or her political beliefs would not amount to serious harm, as she had been able to obtain work in the private sector (albeit at a lesser salary) and so her *"rights [sic] to earn a living has been upheld".* The Tribunal said:

"The applicant has claimed that in the past she has been denied equal opportunities of employment by reason of her political affiliation with a particular party. This discriminatory injustice has not, however, prevented her from gaining employment in the private sector. Thus while such practices establish discrimination they do not amount to persecution."

22 Mansfield J said at 448:

"In my view, the Tribunal erred in concluding that the ability to obtain work in private enterprise reflects the State upholding the 'right to work', where the State either imposes or tolerates a system which precludes certain of its citizens from working in government employment for reasons of religion or political beliefs. Far from treating its citizens equally, the State then is sanctioning discrimination against some of them for Convention reasons. It is difficult to envisage circumstances where such discrimination may, in a practical sense, be insignificant. That is the more so when there is a significant economic disadvantage consequent upon that restriction, although actual economic disadvantage in an immediate personal sense is not per se the critical matter. It is unnecessary to resort specifically to relatively recent historical examples to make the point. To characterise the circumstances as not sufficiently serious to constitute persecution in my view fails to acknowledge the fundamental significance of the State positively excluding certain of its citizens for Convention reasons from employment by the State and its organs."

23 In *Prahastono v Minister for Immigration and Multicultural Affairs* (1997) 77 FCR 260, Hill J was concerned with an Indonesian national, of whom the Tribunal had said, at 263:

"… the Tribunal accepts that the applicant experienced ostracism in society, including at the mosque in 1968, and some discrimination in his tertiary studies and employment. However, though he has encountered unfair conduct, as in the apparent discriminatory refusal of his commercial pilot's licence in Indonesia, the Tribunal finds that even considered cumulatively, the discrimination is not of such a level of seriousness as to amount to persecution within the Convention. The applicant's fundamental rights to a basic education and to earn a livelihood have not been breached. The applicant has completed high school and two years of university studies, and he has maintained employment, albeit he is not able to work for the government in Indonesia."

The view of Hill J is expressed in the following passage at 267:

"In my view, the true position can be explained as follows. Discrimination in employment may constitute persecution in the relevant sense if for a Convention reason. However, whether it does so depends on all the circumstances. Clearly, in an economy where there was no private enterprise at all, inability to obtain government employment for a convention reason would constitute discrimination because that would constitute an 'act of oppression', to adopt the language of McHugh J in Chan. And it would be just as much oppressive and thus involve persecution if, instead of there being no ability to obtain employment, there is ability to obtain employment but limited to jobs which are dangerous or demeaning to the person employed to do them. If, on the other hand, there existed a mixed economy, so that government employment merely competed with private employment and exclusion from government employment would not result or be likely to result in the person seeking work being unable to obtain appropriate work and thus an appropriate living, then it is hard to see that the refusal to permit employment would constitute persecution. That would not be oppressive, at least to any significant extent. Thus, generally, whether restriction on employment amounts to persecution in a Convention sense will depend upon all the circumstances, and particularly upon whether there can be said to be oppression or real harm to the person."

24 I would respectfully query whether a right to work in a mixed economy, which is coupled with an inability to work in government employment, would not involve a discrimination amounting to persecution.

25 Hill J noted at 268 that permanent employment in the Australian public service is limited to those of Australian nationality. Nationality is a Convention ground. Hill J said:

"It would not ordinarily have been said that this discrimination constituted persecution of those who do not qualify as Australian nationals, although obviously directed at such persons."

The conclusion of Hill J, expressed at 268 was:

"… the question whether discrimination becomes persecution involves an issue of fact and degree, and that this is an issue for the decision-maker and not for the court. In my view, it was open for the Tribunal to find there to be no persecution in the present case."

26 In my opinion the answer to the claim made by Mr Krohn, counsel on behalf of the applicant, is that the RRT, on a fair reading of its reasons, did deal with the question of whether exclusion from the public service because of an inability to take the entrance examination on a Saturday, did not amount to persecution for a Convention reason. It is true that there is no express dealing with the question of the exclusion from the public service for this reason. The RRT did say:

"…I do not accept that the applicant has been subjected in Korea to treatment amounting to persecution because of his religion, or that he now faces a real chance of being subjected to such mistreatment if he returns there."

The RRT also said:

"I have considered all the applicant's claims, both separately and cumulatively, but I am not satisfied the applicant has a well-founded fear of persecution in Korea because of his religion or any other Convention reason." (emphasis added)

27 There is one finding by the RRT which is ambiguous. The RRT said:

"While serious discrimination in, or denial of, employment may amount to persecution in a particular case (as discussed in Prahastono v MIMA (1997) 77 FCR 260) I am not satisfied on all the evidence before me that such is the case here."

It is not transparently clear whether this is a finding that in this particular case it had not been established that there was serious discrimination in, or denial of, employment, or is a finding that while there was serious discrimination in or denial of employment in the particular case, such discrimination or denial did not amount to persecution. I think, on a fair reading, the RRT is saying that it was not satisfied that anything that the applicant had experienced amounted to persecution.

28 If I be wrong in that view and, further, it is the case that the RRT was obliged to consider specifically whether exclusion from public sector employment arising from the religious conviction of the applicant, which prevented him from sitting the entrance exams amounted to persecution (being an issue which the RRT failed to consider), still in my view that failure did not amount to an error of law.

29 There is the factual question of whether the claim that *"despite doing well at university, he could not sit for the public service examination because it was held on a Saturday"* amounts to a denial of employment in the public service on the ground of religion. In my view, it is drawing a long bow to conclude that this summary of the applicant's claim involves a finding that the entrance examination is invariably held on a Saturday, and no other timing or arrangement is possible. I proceed on the basis, however, that this is the position which the RRT had to assess.

30 The reason why the assumed failure to consider whether this exclusion amounted to persecution does not amount to an error of law is that even if it be accepted that there was such exclusion, such discrimination could not, in my opinion, amount to persecution for a Convention reason.

31 There is nothing to suggest that any such exclusion was motivated by an attitude on the part of the government against members of any particular religion. The failure of persons to be able to join the public service because their religious convictions prevented them from sitting for entrance examinations which are held on that person's Sabbath, is a consequence of the person's religious conviction. Reference may be made to the example, discussed during submissions on the application, of the well-known All Black forward Michael Jones, whose religious convictions prevented him from playing for the All Blacks when the games were scheduled on a Sunday. In

scheduling games on a Sunday, the football authorities are not, in my opinion, engaging in discrimination on the ground of religion.

32 In my view, the reason why such discrimination as is claimed by the applicant in the present case cannot constitute persecution is that persecution must emanate from the government or manifestations of the government or be conduct which the governmental authorities will not or cannot prevent. There is an element of motivation inherent in the concept of persecution, which element is entirely lacking in the present case.

33 The concept of persecution requires some form of "selective harassment" (per McHugh J in *Chan* at 429) and connotes on intention to do harm, although, as stated in *Chen Shi Hai v Minister for Immigration and Multicultural Affairs* (2000) 201 CLR 293 at 304, there need not be any enmity or malignity. In *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 at 257, McHugh J said that the definition of refugee requires that there be *"intentional discrimination" "that occurs because the person concerned has a particular … religion [or other Convention characteristic]".*

34 In *Applicant A* at 284, Gummow J agreed with the following formulation in *Ram v Minister for Immigration and Ethnic Affairs* (1995) 57 FCR 565 at 568, per Burchett J (with whom O'Loughlin J) agreed:

Persecution involves the infliction of harm, but it implies something more: an element of an attitude on the part of those who persecute which leads to the infliction of harm, or an element of motivation (however twisted) for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors."

35 There is nothing in this case which suggests that there was any intention or motivation on the part of the South Korean Government which has led to any inability on the part of the first applicant to sit the public service examination. Indeed, the evidence and findings were to the contrary, namely, that South Korea is a religiously tolerant society in which religious freedom is protected both in law and practice.

36 In my opinion, there is no basis on which the RRT could properly have held that the conduct of the South Korean Government in holding public service examinations on Saturdays, (if in fact that be the case) amounted to persecution of the first applicant for a Convention reason.

37 The application must be dismissed with costs, to be taxed if not agreed.

I certify that the preceding thirty-seven (37) numbered paragraphs are a true copy of the Reasons

for Judgment herein of the Honourable Justice Spender.

Associate:

Dated:

Counsel for the Applicant:	Mr Anthony Krohn
Solicitor for the Applicant:	MSC Legal Services
Counsel for the Respondent:	Ms Heather Riley
Solicitor for the Respondent:	Clayton Utz
Date of Hearing:	2 August 2001
Date of Judgment:	7 September 2001