FEDERAL COURT OF AUSTRALIA

SBBG v Minister for Immigration & Multicultural & Indigenous Affairs

[2003] FCAFC 121

MIGRATION - judicial review - jurisdiction of the Federal Court - jurisdictional error - whether NAAV still good law - meaning of 'persecution' – 'general laws' - prejudgment - repetition of same factual error in different cases - whether appeal court should determine for itself whether there is jurisdictional error.

Migration Act 1958 (Cth) ss 91R, 474

Judiciary Act 1903 (Cth) s 39B

Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Applicants S134/2002 (2003) 195 ALR 1 followed

Plaintiff S157/2002 v Commonwealth of Australia (2003) 195 ALR 24 followed

NAAV v Minister for Immigration and Multicultural Affairs (2002) 193 ALR 449 not followed

R v Hickman; Ex parte Fox and Clinton (1945) 70 CLR 598 cited

Chan Yee Kin v Minister for Immigration and Ethnic Affairs (1990) 169 CLR 379 discussed

Koulaxazov v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCAFC 75 not followed

SDAH v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCAFC 49 applied

Minister for Immigration and Multicultural and Indigenous Affairs v WAAG [2003] FCAFC 60 applied

Scargill v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCAFC 116 applied

SBBA v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCAFC 90 cited

WACM v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCAFC 92 cited

Sbbg V Minister For Immigration And Multicultural And Indigenous Affairs

S 248 OF 2002

GRAY, von DOUSSA and SELWAY JJ

6 JUNE 2003

ADELAIDE

IN THE FEDERAL COURT OF AUSTRALIA	
SOUTH AUSTRALIA DISTRICT REGISTRY	S 248 OF 2002

ON APPEAL FROM A SINGLE JUDGE OF THE FEDERAL COURT OF AUSTRALIA

BETWEEN:	SBBG APPELLANT
AND:	MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS

	RESPONDENT
JUDGES:	GRAY, von DOUSSA and SELWAY JJ
DATE OF ORDER:	6 JUNE 2003
WHERE MADE:	ADELAIDE

THE COURT ORDERS THAT:

1. The appeal allowed and order made on 30 October 2002 be set aside.

2. The application for judicial review remitted to a single judge for hearing and determination in accordance with law.

3. Costs of the appeal to form part of the costs in the cause.

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

IN THE FEDERAL COURT OF AUSTRALIA	
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ON APPEAL FROM A SINGLE JUDGE OF THE FEDERAL COURT OF AUSTRALIA

BETWEEN:	SBBG
	APPELLANT

AND:	MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS RESPONDENT

JUDGES:	GRAY, von DOUSSA and SELWAY JJ
DATE:	6 JUNE 2003
PLACE:	ADELAIDE

REASONS FOR JUDGMENT

THE COURT

1 The question arising in this appeal is whether there is any appealable error in the reasoning of the primary judge that judicial review was not available of the decision of the Refugee Review Tribunal ('the Tribunal') in this matter. For the reasons set out below we find that there was such an appealable error, namely that the primary judge and the parties proceeded on a misunderstanding of the *Migration Act 1958* (Cth) ('the Act') – a misunderstanding revealed by subsequent decisions of the High Court. In light of that error it is appropriate on the particular facts and issues that arise in this case that the appeal be allowed and for the matter to be remitted to a single judge for that judge to determine the application for judicial review in accordance with law.

THE FACTS

2 The appellant, his wife and two children arrived in Australia on 5 April 2001. They were and are 'unlawful non-citizens' for the purposes of the Act. They were taken into detention.

3 The appellant is a citizen of Iran. Iran has an Islamic government. Within that system of government there is no separation between the institutions of government and those of the established Islamic religion.

4 The appellant and his family are members of the Mandaean religion (also called the Sabaean, or Sobbi religion). The appellant claimed to have a well-founded fear of persecution in Iran by reason of his religion.

5 On 25 June 2001, the appellant lodged an application for a protection visa. In order to obtain such a visa the respondent had to be satisfied that the appellant is a person to whom Australia has protection obligations under the

Refugees Convention as amended by the Refugees Protocol: s 36(2) of the Act. In general terms the Minister for Immigration and Multicultural and Indigenous Affairs ('the Minister') had to be satisfied that the appellant was a 'refugee' as defined in the Convention being a person who:

'…owing to a well-founded fear of being persecuted for reason 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.'

6 On 13 September 2001, a delegate of the Minister refused to grant the appellant a visa. On 17 September 2001, the appellant sought a review of that decision from the Refugee Review Tribunal. The Tribunal gave its decision on 19 December 2001.

7 The persecution alleged by the appellant, supported by his wife and children, fell into two categories. The first was what might be described as 'general' discrimination against all Mandaeans. This discrimination arose because the Mandaean religion was not an official religion in Iran. The Mandaeans were treated as 'dirty'. The discrimination alleged included:

(a) Mandaean men are very limited in what employment they can undertake. In general terms they are limited to working with jewellery, particularly goldsmithing. They are particularly limited from working with food. Mandaean women would seem to be even more limited in the jobs they can do.

(b) Mandaeans will not be employed by the government.

(c) If Mandaean children are to educated in government schools then they receive compulsory education in Islam.

(d) Mandaeans suffer discrimination in the courts. Some remedies that are available to Islamic citizens are not available to Mandaeans. The judiciary is affected by religious influence. Even where Mandaeans apparently have equal rights, their evidence is unlikely to be believed, particularly where it conflicts with evidence of a Moslem person.

(e) Mandaean places of worship have been seized by the government. Their cemeteries have been destroyed.

(f) Mandaeans suffer general abuse and vilification from their Moslem neighbours. Women, in particular, are assaulted and often raped.

(g) The authorities do not protect the rights of Mandaeans. To the contrary, Moslems that abuse and attack Mandaeans will be protected in the education and judicial systems and by the police.

8 In considering these claims the Tribunal compared them to other information available to the Tribunal. We comment further on this below. The Tribunal concluded:

'The Tribunal finds that as a religious minority in Iran, the Sabian/Mandaean community faces some discrimination, and that as individuals, Sabian/Mandaeans may thus face some discrimination…The Tribunal finds that these occurrences are unpleasant but do not consider that such treatment amounts to "serious punishment or penalty" or "significant detriment or disadvantage" [see McHugh J in Chan's Case] and therefore does not amount to persecution for the purposes of the Convention.'

9 In addition, the appellant and his wife and children made specific claims of individual events of persecution to which they claimed to have been subjected. So, for example, the appellant claimed to have been assaulted for wearing a cross. The appellant's wife claimed that she had been harassed for non-compliance with the Islamic dress code for women; that she was assaulted by an official when she tried to enrol her daughter at school; and that she was often assaulted in the street. The appellant's son gave evidence of being assaulted at school and of the school principal supporting the assailant. He also gave evidence of having been taken into detention and then being assaulted by the Iranian authorities. The appellant's daughter gave evidence of threats that had been made to her to induce her to convert to Islam; of having had acid thrown at her in the street; of having been kidnapped; of having been forced to wear the chador.

10 As to these specific claims the Tribunal generally disbelieved the appellant, his wife and children. This disbelief was usually based either upon inconsistencies between the specific claim made and the other information available to the Tribunal, or on the basis that the claim made was inherently unreasonable or illogical. So, for example, the appellant's claim that he could not obtain employment was rejected as being inconsistent with the other material before the Tribunal. And his claim that he was assaulted for wearing a crucifix was rejected because the Tribunal found the claim that he was wearing a crucifix implausible in light of the independent evidence that Mandaeans believe that Christ is a false prophet.

11 There were a limited number of occasions where the Tribunal was prepared to accept that the specific allegations of discrimination might be true. But in those cases it found that the specific allegation did not amount to 'persecution' for the purposes of the Act. So, for example, the Tribunal accepted that the appellant's wife and daughter were compelled by Iranian law to wear the chador, but found that the law was a law of general application which 'does not ordinarily constitute persecution'.

PROCEEDINGS BEFORE THE PRIMARY JUDGE

12 The appellant instituted judicial review proceedings in this Court pursuant to s 39B of the *Judiciary Act 1903* (Cth). The proceedings were heard and determined on 30 October 2002, by the primary judge.

13 On the face of it, the decision of the Tribunal in this matter appears to be a 'privative clause decision' for the purposes of s 474 of the Act. Section 474 of the Act provides:

'474 Decisions under Act are final

(1) A privative clause decision:

(a) is final and conclusive; and

(b) must not be challenged, appealed against, reviewed, quashed or called in question in any court; and

(c) is not subject to prohibition, mandamus, injunction, declaration or certiorari in any court on any account.

(2) In this section:

privative clause decision means a decision of an administrative character made, proposed to be made, or required to be made, as the case may be, under this Act or under a regulation or other instrument made under this Act (whether in the exercise of a discretion or not), other than a decision referred to in subsection (4) or (5).

(3) A reference in this section to a decision includes a reference to the following:

(a) granting, making, suspending, cancelling, revoking or refusing to make an order or determination;

(b) granting, giving, suspending, cancelling, revoking or refusing to give a certificate, direction, approval, consent or permission (including a visa);

(c) granting, issuing, suspending, cancelling, revoking or refusing to issue an authority or other instrument.'

14 It is plain that the parties and the primary judge proceeded on the basis that s 474 of the Act had the effect of limiting the jurisdiction of the Court in the manner stated by Dixon J in *R v Hickman; Ex parte Fox and Clinton* (1945) 70 CLR 598 ('*Hickman')* at 615. This is hardly surprising. It was required by the decision of this Court in *NAAV v Minister for Immigration and Multicultural Affairs* (2002) 193 ALR 449 ('*NAAV'*). So, for example, the amended application filed by the appellant expressly provides:

‘The Tribunal erred in exceeding or in failing to exercise its jurisdiction:

(i) The Tribunal’s approach reflected an erroneous understanding of what constitutes“a well-founded fear of persecution”.

(ii) The Tribunal failed to consider all the claims of the applicant as to why they faced persecution in Iran.

It is submitted that, but for Section 474(1), the errors would result in the decision being invalid and of no effect. It is conceded that, given the current state of the law, this ground should not be pursued at this stage.’

And, in relation to an argument that the Tribunal had not considered a particular claim, the primary judge noted that ‘nevertheless, even if it can be shown that there is an error made, such an error is not sufficient to establish bias or pre-judgment or indeed any lack of bona fides on the part of the decision-maker…’. It is clear that the application proceeded before the primary judge on the basis that the jurisdiction of this Court to review the decision of the Tribunal was limited to *Hickman* grounds.

15 In accordance with this mutual understanding, the issue considered by the primary judge was whether or not the Tribunal had acted bona fide. The primary judge held:

‘In order to establish lack of bona fides it is necessary, on the basis of the authorities which are binding on me, to demonstrate that there is something in the nature of bias or circumstances which indicate a lack of an honest or genuine attempt to undertake the task in a way meriting personal criticism of the Tribunal or officer in question.’

16 The primary judge concluded that the arguments put by the appellant did not establish any lack of bona fides. He dismissed the application for judicial review.

THIS APPEAL

17 The first question before us is whether there is any appealable error in the approach of the primary judge.

18 At the time of the hearing at first instance, the Court and the parties did not have the benefit of the High Court decisions in *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Applicants S134/2002* (2003) 195 ALR 1 (‘*S134*’) and *Plaintiff S157/2002 v Commonwealth of Australia* (2003) 195 ALR 24 (‘*S157*’) where the High Court ‘read down’ the otherwise broad terms of s 474.

19 Following those decisions it is clear that the reasoning of the majority in *NAAV* is incorrect. It follows that *NAAV* is no longer binding authority. So much is established by the decisions of the Full Court in *SDAH v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 49 at [17]-[18], *Minister for Immigration and Multicultural and Indigenous Affairs v WAAG*

[2003] FCAFC 60 at [5] and in *Scargill v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 116 at [3]-[5]. In this regard we note the obiter comments of two members of the Full Court in *Koulaxazov v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 75 ('*Koulaxazov*') at [14] and [73]; contrast at [10] that the decisions in *S134* and *S157* should only be followed for what they actually decide and that otherwise the reasoning in *NAAV* should continue to apply. We also note that the issue of the continuing effect (if any) of the reasoning in *NAAV* was left open in *WACM v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 92 at [35] - [36] and in *SBBA v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 90 ('*SBBA*') at [16] - [17]. We cannot avoid dealing with the issue. In our respectful opinion the approach suggested by two members of the Court in *Koulaxazov* is not open given the clear terms and effect of the reasoning of the High Court.

20 In light of the High Court decisions in *S134* and *S157*,the jurisdiction of this Court in judicial review proceedings is broader than that on which the parties and the Court proceeded at first instance. It is clear from the High Court decisions that the Court's jurisdiction is limited to 'jurisdictional errors' (*S157* at [76]) and that, in determining whether or not a particular error is a 'jurisdictional error', it is necessary to have regard to the whole of the Act, including s 474 (see *S157* at [77]-[78]). However, this is a significantly broader jurisdiction than that assumed by the primary judge and by the parties. In particular, it is clear that this Court has jurisdiction pursuant to s 39B of the *Judiciary Act 1903* (Cth) in relation to a breach of the rules of natural justice (as understood in the context of the Act). This would include, for example, a failure to afford a fair hearing. It would also include a reasonable apprehension of bias. It is also clear that the Court has jurisdiction pursuant to s 39B of the *Judiciary Act 1903* (Cth) where the Tribunal has proceeded on a misunderstanding of the law, at least in relation to defining its core task. This includes, in particular, a misunderstanding of the legal meaning of 'refugee'.

21 Given that the parties and the primary judge proceeded on a misunderstanding of the jurisdiction of this Court, it is clear that there has been an appealable error. Mr Tredrea, who appeared for the respondent, properly conceded as much.

22 The next question is how this Court should deal with that error. There are two possibilities. The first is that the Full Court should proceed to determine for itself whether the review before the primary judge would have been successful or not, if the primary judge had had the benefit of the High Court's decisions. The Full Court would determine for itself whether or not there had been jurisdictional error. The other possibility is that the Full Court simply allow the appeal on the basis of the accepted error and then remit the matter back to a single judge for that judge to determine whether or not there had been jurisdictional error. The decision as to which course should be followed is a discretionary decision. The factors to be considered in relation to such a decision have been discussed in a number of cases: see *Ngu v Minister for Immigration and Multicultural and Indigenous Affairs* [2003]

FCAFC 54; *SGDB v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCA 74.

23 The appellant's counsel, Mr Charman, did not expressly address the question whether the case should be remitted to a single judge or not. Mr Tredrea for the respondent argued that the Full Court should proceed to determine for itself whether there had been jurisdictional error.

24 What the appellant did do is file a Notice of Motion seeking to have the appeal proceedings adjourned so that 'fresh evidence' could be sought from Iran as to medical treatment that the appellant's wife may have received there. It was suggested that such evidence may help confirm her evidence before the Tribunal that she had been assaulted. The request was refused. As the proceedings before us involve an appeal from a decision in a judicial review proceeding the proposed evidence would not be relevant to any issue before this Court, whether or not it may have been relevant if called before the Tribunal. There was no suggestion that there was any jurisdictional error by the Tribunal in not having sought the proposed evidence. In any event it was not clear that the suggested evidence, if it existed, would comply with the rules about fresh evidence.

25 The appellant then sought leave to amend his grounds of appeal. Leave was granted, save for one proposed ground which related to a suggestion that the appellant's wife might be called by the Director of Public Prosecutions to give evidence in a criminal case. The appellant wished to argue that the appellant's wife might be at risk on her return to Iran by reason of that evidence. However, even if this was so, it would not be discrimination for a Convention reason. Nor would it appear that the ground would be relevant to the question whether the Tribunal committed a jurisdictional error. The leave to amend was limited so as not to include this proposed ground.

26 The remaining grounds basically involved various alleged jurisdictional errors in the reasoning of the Tribunal. Mr Charman put submissions in relation to these grounds. Those submissions concentrated on the question whether the Tribunal had afforded a fair hearing to the appellant, and, in particular, to the appellant's wife. An argument was also put that the transcript of the Tribunal hearing gave rise to a reasonable apprehension of bias on the part of the Tribunal member. In light of the decision we have reached in this case, it is inappropriate for us to say very much as to these particular grounds save that, if the only issues in the case involved those arguments then we would have been disposed to proceed to deal with the issue of whether there had been jurisdictional error ourselves and not remit the matter.

27 However, there are at least three arguments put by Mr Charman on behalf of the appellant which raise different considerations.

28 One of those arguments was that the Tribunal had misunderstood the legal test for 'persecution' under the Act. Section 91R of the Act provides in part:

'(1) For the purposes of the application of this Act and the regulations to a particular person, Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless:

(a) that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution; and

(b) the persecution involves serious harm to the person; and

(c) the persecution involves systematic and discriminatory conduct.

(2) Without limiting what is serious harm for the purposes of paragraph (1)(b), the following are instances of serious harm for the purposes of that paragraph:

(a) a threat to the person's life or liberty;

(b) significant physical harassment of the person;

(c) significant physical ill-treatment of the person;

(d) significant economic hardship that threatens the person's capacity to subsist;

(e) denial of access to basic services, where the denial threatens the person's capacity to subsist;

(f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.'

This provision raises a number of interesting questions. The test of 'serious harm' may be the same test as that proposed by Mason CJ in *Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1990) 169 CLR 379 ('*Chan*') at 388: 'some serious punishment or penalty or some significant detriment'. This may be the same test as that applied by McHugh J in *Chan* at 429-431. However, McHugh J gave some greater explanation of what was encompassed within the test:

'…denial of access to employment, to the professions and to education or to 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.'

If one looks at the citation of the relevant passages by Mason CJ and McHugh J in later judgments it is at least arguable the two passages are treated as consistent. The relevant citations are discussed in *Minister for Immigration and Multicultural and Indigenous Affairs v Kord* [2002] FCA 334 at [15]-[30].

> 29 In this regard it would seem that the Tribunal accepted that Mandaeans were limited in their employment, their education (including primary education), their practice of religion, their protection by and access to the courts and so on. On the High Court authority it is at least arguable that what the Tribunal described as 'inconveniences, disruptions and limitations' are, in law, 'persecution' under the Convention. This then raises the further question (assuming that the respondent wishes to put it) whether s 91R of the Act limits the meaning of persecution from the meaning it has under the Convention. This involves ascertaining the meaning and effect of the words at the start of ss (2), 'Without limiting what is serious harm for the purposes of paragraph (1)(b)…'. This is not to say that the full exploration of this issue after full argument may not have the consequence that the decision of the Tribunal is, in essence, the result of its factual findings, rather than any error as to jurisdiction: see *SBBA v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 90. It is only to say that the exploration of that issue, on the facts of this case and the findings actually made by the Tribunal, is not futile.
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> 30 Another more limited question also arises in this context. In relation to some of the specific allegations of persecution, particularly those relating to the legal obligation on women to wear the chador, the Tribunal concluded that this was a general obligation of Iranian law and thus could not constitute persecution. However, when an apparently general obligation in fact imposes a requirement reflecting discrimination for a Convention reason it is not a 'general requirement'. We refer to the decision of the Full Court in *Wang v Minister for Immigration and Multicultural Affairs* (2000) 179 ALR 1 at 13-16 [50]-[68]. For example, a law requiring everyone who gives evidence in court to take an oath on the Christian bible appears to be general in form but is discriminatory on all those who are not Christians. Whether that discrimination constitutes 'persecution' or not may depend upon the surrounding circumstances, such as what the practical consequence of the law might be. These issues have not been explored in the submissions before us. However, it seems to us that the appellant does have reasonable arguments that can be put in relation to those issues, whether or not those arguments might ultimately be successful.
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> 31 The third argument put by Mr Charman relates to the use by the Tribunal of the 'independent evidence'. As to this it is clear that the Tribunal does have jurisdiction to make factual findings. Generally an error of fact made by the Tribunal does not give rise to any jurisdictional error. In light of s 474 of the Act, judicial review is not generally available for such errors. We

refer again to the recent decision in *SBBA*. However, in this case the factual findings by the Tribunal in relation to what we have called the general discrimination against Mandaeans is repeated four times in the Tribunal's reasons. Mr Charman suggested that those factual findings are similar to findings made in other cases by the Tribunal. Indeed, it would appear that the member who comprised the Tribunal in this case has made the same findings in exactly the same words in other cases. The case of *SDAH v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 49 would seem to be an example. Mr Charman also suggested that those findings, particularly in relation to the use of reports from governments and international agencies, involved a number of factual errors. He referred in particular to misquotations; to quotations taken out of context; to the Tribunal having drawn conclusions from the failure of 'independent' reports to deal with an issue which conclusions could not be sustained as a matter of logic and so on. Clearly enough the Tribunal has an obligation to consider the particular application before it and the facts as they pertain to that application. In doing so there is nothing wrong in the Tribunal reaching the same conclusion that it did in a previous case – indeed, if the facts are the same it is to be hoped that the Tribunal would. Nor is there anything wrong in the Tribunal using a word processor to express exactly the same conclusion in exactly the same terms. However, where the conclusion reached is obviously wrong as a matter of fact and that error is repeated in exactly the same terms in later cases, then it is at least arguable that the repetition of the error would lead a reasonable observer to apprehend that the Tribunal had prejudged the relevant issue. That would involve a jurisdictional error.

32 These arguments, and the respondent's answer to them, were not developed before us, whether on a factual or a legal basis. As noted above, the submissions before us concentrated on the question whether the transcript revealed that the appellant and his family had not received a fair hearing. Our comments on the arguments set out above should not be taken as expressing any view on whether the arguments should ultimately succeed or not. For present purposes it is enough to say that they do not seem to us to be futile. Further, the ultimate decision in relation to each of these arguments would involve some development in the existing law. Given that these issues were not explored at all before the primary judge and were not dealt with at any depth before us it is appropriate that both parties be given the opportunity to further consider what arguments they wish to put and to develop those arguments. Given the circumstances in which this case has arisen and the potential consequences of any adverse decision, it is also appropriate that both parties have the opportunity to appeal as of right from any decision adverse to their interest.

33 For these reasons the appropriate course in this case is to allow the appellant's appeal and to remit the matter to a single judge to hear and determine the application for judicial review in accordance with law. As there was no dispute before us as to whether there was appealable error and as the arguments on the ultimate outcome of the case were not fully developed by either party it is not appropriate for us to make an order determining which party should bear the costs of the appeal. Instead the costs of the appeal

should form part of the costs of the cause to be determined by the single judge.

I certify that the preceding thirty-three (33) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justices Gray, von Doussa and Selway.

Associate:

Dated: 6 June 2003

Counsel for the Appellant:	P Charman
Solicitor for the Appellant:	Refugee Advocacy Service of South Australia
Counsel for the Respondent:	K Tredrea
Solicitor for the Respondent:	Sparke Helmore
Date of Hearing:	15 May 2003
Date of Judgment:	6 June 2003