

FEDERAL COURT OF AUSTRALIA

SZATV v Minister for Immigration and Multicultural and Indigenous Affairs [2005]
FCA 1627

MIGRATION – appeal from Federal Magistrates Court – relocation – appellant may not be able to obtain work as a journalist – appellant able to obtain work in construction industry – s 424A of the *Migration Act 1958* (Cth) – no jurisdictional error

Migration Act 1958 (Cth) s 424A(3)(b)

Prahastono v Minister for Immigration and Multicultural Affairs, Hill J, 8 July 1997, unreported cited

Minister for Immigration and Multicultural Affairs v Ibrahim (2000) 204 cited

Ahmadi v Minister for Immigration and Multicultural Affairs [2001] FCA 1070 cited

Korizad v Minister for Immigration and Multicultural Affairs [2002] FCA 487 cited

SZATV v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS

NSD 1434 OF 2005

TAMBERLIN J

31 OCTOBER 2005

SYDNEY

IN THE FEDERAL COURT OF AUSTRALIA

NEW SOUTH WALES DISTRICT REGISTRY

NSD 1434 OF 2005

ON APPEAL FROM THE FEDERAL MAGISTRATES COURT

BETWEEN: SZATV
APPELLANT

AND: MINISTER FOR IMMIGRATION AND MULTICULTURAL
AND INDIGENOUS AFFAIRS
RESPONDENT

JUDGE: TAMBERLIN J

DATE OF ORDER: 31 OCTOBER 2005

WHERE MADE: SYDNEY

THE COURT ORDERS THAT:

The appeal is dismissed with costs.

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

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JUDGE: TAMBERLIN J

DATE: 31 OCTOBER 2005

PLACE: SYDNEY

REASONS FOR JUDGMENT

1 This is an appeal from a decision of Federal Magistrate Nicholls refusing review of a decision of the Refugee Review Tribunal made on 30 April 2003.

2 The relevant facts and background are set out in the comprehensive reasons for judgment given by the Federal Magistrate and I will not repeat them here.

3 On the hearing of the appeal, the issue agitated was the question of relocation and the way in which the Federal Magistrate approached that question.

4 The appellant was a journalist and had trained as a journalist. In setting out the appellant's case, the Tribunal recorded that the appellant had actively sought work as a journalist but, on visiting newspapers in a number of cities where he had contacts, his reputation as attracting political attention had preceded him and editors who might potentially employ him were nervous about employing such a person.

5 In relation to relocation, the Tribunal found that, notwithstanding the possible requirements of registration in the particular circumstances of the case, internal relocation was a realistic option for the appellant. This was because the appellant had already shown himself to have the resilience and flexibility to resettle in Australia and find work here. The appellant was well-

educated and, while he may not be able to work as a **journalist** elsewhere in the Ukraine, the Tribunal believed that he may be able to obtain other work in the Ukraine in the construction industry, as he had done in Australia.

6 There was a finding by the Tribunal that the chance of the appellant being arrested upon return to the Ukraine was remote. The Tribunal was satisfied that the appellant did not have an anti-government political profile generally in the Ukraine and would not be of adverse interest to authorities outside the Chernovtsky region. The Tribunal gave reasons for its conclusion that any danger was too remote.

7 On the appeal, the appellant sought to argue that there had been an error in the decision of the Federal Magistrate and of the Tribunal in their treatment of the question of relocation. The specific error identified by the appellant was that he said that he had made a submission before the Tribunal that he would want to work as a journalist in the Ukraine if he was returned and that he would be unable to obtain employment in his chosen profession as a journalist and therefore this would constitute persecution.

8 This issue was not raised in these terms before the Tribunal but was raised by the Federal Magistrate who dealt with the issue in detail at [22] of the reasons. The Federal Magistrate pointed out that the appellant had not articulated his claims as now sought to be done and that it was not enough to say that the unarticulated possibilities that arise from the circumstances in the appellant's case should have caused the Tribunal to look at the issue in detail. The Tribunal looked at the possibility of the appellant obtaining work as a journalist elsewhere in the Ukraine. While the Tribunal found that the applicant may not be able to work as a journalist elsewhere, the Federal Magistrate considered that the use of the word "may" implied that the possibility that the appellant's potential to work as a journalist was still alive but that, in any event, in the context of relocation, as one relevant factor, he may be able to obtain work in the construction industry. The Federal Magistrate found that there was no error in the approach taken by the Tribunal in relation to this question.

9 I agree with the reasons given by the Federal Magistrate and with the approach taken.

10 It seems to me that the finding that has been made to the effect that the appellant was able to obtain work in Australia in the construction industry and that he has the resilience and flexibility to resettle in the Ukraine, is a finding of fact which supports the conclusion that the possibility of persecution if returned is remote, in the sense that, if returned, it would be open to the appellant to seek alternative work in the construction industry.

11 The fact that the appellant may be unable to obtain employment as a journalist is not, in my view, determinative of whether he could find other suitable work. The fact that there is other work which the appellant finds satisfactory is an important consideration that supports the finding of fact by the Tribunal. It has been held that an inability to work in one's chosen field of

endeavour, without more, will not amount to persecution: see *Prahastono v Minister for Immigration and Multicultural Affairs*, Hill J, 8 July 1997, unreported; *Minister for Immigration and Multicultural Affairs v Ibrahim* (2000) 204 CLR 1 at [55] per McHugh J; *Ahmadi v Minister for Immigration and Multicultural Affairs* [2001] FCA 1070 per Wilcox J; *Korizad v Minister for Immigration and Multicultural Affairs* [2002] FCA 487 at [14] ff per R D Nicholson J.

12 Accordingly, I do not think that it can be said that there was a danger of harassment or persecution of the appellant if returned to the Ukraine.

13 I am not satisfied that any error of law has been made that would go to jurisdiction in this matter and I therefore do not accept the claim insofar as it is brought on this basis on the appeal.

14 The appellant also submitted that he was not given an opportunity to comment on the material relied on by the Tribunal in relation to the question of re-location. I am satisfied that the appellant gave the relevant information to the Tribunal for the purpose of the application, within the meaning of s 424A(3)(b) of the *Migration Act 1958* (Cth), and therefore s 424A does not apply. I am also satisfied that this question was not raised by the appellant on the hearing before the Federal Magistrate from which this appeal was taken although the appellant was represented by experienced counsel in this area. I do not think it is appropriate for the matter to be raised at this stage and this is another independent reason for rejecting the submission based on s 424A in this case.

15 For the above reasons, I am not persuaded that there has been any error in the reasoning of the Magistrate or of the Tribunal which would give rise to any basis for judicial review on the basis of jurisdictional error.

16 Accordingly, the appeal is dismissed with costs.

I certify that the preceding sixteen (16) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Tamberlin.

Associate:

Dated: 11 November 2005

The Appellant appeared in person with the assistance of an interpreter.

Counsel for the Respondent: T Reilly

Solicitor for the Respondent: Australian Government Solicitor

Date of Hearing: 31 October 2005

Date of Judgment: 31 October 2005