

FEDERAL COURT OF AUSTRALIA

SZFDV v Minister for Immigration & Multicultural & Indigenous Affairs [2005] FCA 1312

MIGRATION – refugees – protection visa – relocation

NALZ v Minister for Immigration & Multicultural & Indigenous Affairs (2004) 140 FCR 270 referred to

Randhawa v Minister for Immigration, Local Government and Ethnic Affairs (1994) 52 FCR 437 discussed

Appellant S395/2002 v Minister for Immigration and Multicultural Affairs (2004) 216 CLR 437

SZFDV v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND
INDIGENOUS AFFAIRS and REFUGEE REVIEW TRIBUNAL

N 1052 OF 2005

MADGWICK J

13 SEPTEMBER 2005

SYDNEY

IN THE FEDERAL COURT OF AUSTRALIA

NEW SOUTH WALES DISTRICT REGISTRY

N 1052 of 2005

BETWEEN:	SZFDV APPELLANT
AND:	MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS FIRST RESPONDENT REFUGEE REVIEW TRIBUNAL SECOND RESPONDENT
JUDGE:	MADGWICK J
DATE OF ORDER:	13 SEPTEMBER 2005
WHERE MADE:	SYDNEY

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The appellant pay the costs of the first respondent, assessed in the sum of \$2,500.

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

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NEW SOUTH WALES DISTRICT REGISTRY	N 1052 of 2005

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AND:	<u>MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS</u> FIRST RESPONDENT REFUGEE REVIEW TRIBUNAL SECOND RESPONDENT
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JUDGE:	<u>MADGWICK J</u>
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DATE:	13 SEPTEMBER 2005
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PLACE:	SYDNEY
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REASONS FOR JUDGMENT

Madgwick J:

1 The appellant arrived in Australia on 16 May 2004 and applied for a protection visa on 3 June 2004 which was refused by a delegate of the first respondent on 11 June 2004. In due course the Refugee Review Tribunal ('the Tribunal') heard an application for review of the delegate's decision and

affirmed that decision by its own decision dated 18 October 2004 handed down on 10 November 2004. The matter is before the Court by way of an appeal from the Federal Magistrates Court which rejected an application for judicial review of the Tribunal's decision in a judgment given by Federal Magistrate Scarlett on 16 June 2005.

2 His Honour dealt with the stated grounds of the application and rejected them all as having no substance. The Notice of Appeal (as finally amended), contains a single ground which asserts that there was a constructive failure by the Tribunal to exercise its jurisdiction having regard to the manner in which it dealt with the question of possible avoidance of any harm should the appellant return to India, his country of nationality, by relocating to a state other than his home state.

3 The appellant claimed to fear persecution for the reason of his political opinion. He and his family were Communist Party supporters. His brother was killed at a Communist Party meeting in 1998 by 'rowdies' associated with other political forces. The appellant says that after he joined the Communist Party in 2003 the police laid 'false charges' against him and he was attacked in the offices of his Party by persons associated with other political forces. He also claimed that his hand was broken by these political opponents on a separate occasion. In addition, police harassed him and his family, and he moved to Madras, now known as Chennai, the capital of his home state of Tamil Nadu.

4 The Tribunal principally concerned itself with whether it could 'expect [the appellant] to safely relocate' to another state. In particular, the Tribunal member stressed as an example, another state, Kerala, where the Communist Party is apparently one of the two main political parties which vie for power in that state, and where the DMK, the main force providing spirited opposition to the Communist Party in Tamil Nadu has little, if any, power.

5 The Tribunal Member applied the test that he would 'need to be satisfied it was reasonable in all the circumstances to expect' the appellant so to relocate and, after considering circumstances as to the appellant's education, health, social capability and ethnicity, determined that he could do so.

6 In so doing the Tribunal member was applying the test sanctioned by the Full Court of this Court in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 ('*Randhawa*') per Black CJ at 443 and Beaumont J at 451.

7 I have myself wondered, in *NALZ v Minister for Immigration & Multicultural & Indigenous Affairs* (2004) 140 FCR 270, whether the *Randhawa* test remains appropriately framed in the light of *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* (2004) 216 CLR 437.

8 However, I am bound by *Randhawa* and, on the authority of that case the Tribunal proceeded in a legally unexceptionable way. Having regard to the way the Tribunal member found the facts in this case, it might well be that,

even should another test be applied (namely what would the appellant do if actually returned to India by way of possible relocation), the factual findings would, in any event, mandate the conclusion that he would relocate.

9 The appellant's appeal, which includes some matters by way of submission, says:

'The consideration of the "internal flight principle" was ... not palpably appreciated by the Tribunal member. I was a citizen not of Madras but of India and therefore the option of relocation was not available to me.'

10 Insofar as this is comprehensible at all, it is a complete misreading of *Randhawa*.

11 It follows that there is no substance in the appeal in the state of the law as I must accept it. The appeal must be dismissed with costs which are assessed in the sum of \$2,500.

I certify that the preceding eleven (11) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Madgwick.

Associate:

Dated: 26 September 2005

Solicitor for the Appellant:	The appellant appeared in person
Counsel for the First Respondent:	Mr P Braham
Solicitor for the First Respondent:	Phillips Fox
Date of Hearing:	13 September 2005
Date of Judgment:	13 September 2005