



## HIGH COURT OF AUSTRALIA

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### MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS v SGLB

The High Court of Australia today upheld an appeal by the Minister in a case involving an Iranian man's application for a protection visa.

SGLB arrived in Australia by boat in June 2000. He has given different versions of why he left Iran, initially saying he hoped to find a job and a wife and a less monotonous life with no mention of persecution and incarceration. But when he applied for a protection visa he said his family had suffered discrimination, detention and torture because they were Arab in a largely Persian nation. Later, when presented with evidence that Iranian authorities did not discriminate against Arabs, SGLB said he faced harm due to his political opinions and involvement in demonstrations rather than his ethnicity. His application for a protection visa was rejected in December 2000.

This rejection has been the subject of numerous proceedings in the Refugee Review Tribunal, the Federal Court and the Federal Magistrates Court. In one proceeding SGLB told the RRT he faced harm as a member of the Hamid tribe which was associated with Iraq during the Iran-Iraq war. In a later proceeding, a differently constituted tribunal was prepared to accept SGLB had post-traumatic stress disorder (PTSD) which affected his ability to give evidence but, based on a psychologist's report that he did not have a well-founded fear of persecution for either ethnic or political reasons and other evidence, the RRT affirmed the decision to reject the visa application. An application to the Federal Court for judicial review was transferred to the Federal Magistrates Court, which dismissed the application. He then appealed to the Federal Court which was constituted by Justice Bradley Selway, who was also dealing with a separate application in the Court's original jurisdiction. In the appeal, Justice Selway identified three flaws in the RRT's decision: no evidence on which the RRT could be satisfied SGLB was suffering from PTSD; no evidence to enable the RRT to assess the effects of PTSD on his credibility; and a failure by the RRT to satisfy itself that he was competent to take part in proceedings.

The Minister appealed to the High Court, arguing that the RRT had not erred. In the appeal, SGLB contended that the errors identified by Justice Selway amounted to a denial of procedural fairness, but the Court rejected this contention as the RRT had sought to accommodate SGLB and his concerns during proceedings. The Court held that the RRT's acceptance of PTSD was actually beneficial to SGLB. The Court held there was also evidence before the RRT for it to assess SGLB's reliability and the RRT was not obliged to obtain further medical or psychiatric reports. However the Court rejected the Minister's submission that in any event the RRT's decision was protected against judicial review unless the RRT had not acted in good faith. The Court, by a 4-1 majority, allowed the appeal. The Minister is to pay SGLB's costs in accordance with the terms of the grant of special leave to appeal.

- *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.*