



HIGH COURT OF AUSTRALIA

Public Information Officer

6 August 2004

AHMED ALI AL-KATEB v PHILIPPA GODWIN, DEPUTY SECRETARY, DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS; JULIE HELEN KEENAN, ACTING DIRECTOR OF THE UNAUTHORISED ARRIVALS SECTION; AND MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS

MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS v ABBAS MOHAMMAD HASAN AL KHAFAJI

The High Court of Australia today held that unsuccessful asylum seekers who could not be removed to another country, despite their wish to leave Australia, could continue to be held in immigration detention indefinitely.

Both cases involve asylum seekers who had asked to be returned to the Middle East. The Federal Government has been unable to reach arrangements with other countries to take them, but argued that the Migration Act required they be held in immigration detention in the meantime, regardless of whether such an arrangement could ever be reached.

Mr Al-Kateb, 28, is a stateless Palestinian who was born and lived most of his life in Kuwait. He arrived in Australia in December 2000 and applied for a protection visa. His application was dismissed by the department, the Refugee Review Tribunal, the Federal Court and the Full Court of the Federal Court. Mr Al-Kateb then told the department he wished to leave Australia and be sent to either Kuwait or Gaza. In February 2003 he initiated action in the Federal Court claiming he was being unlawfully detained. The Court held that although there was no likelihood of removal in the reasonably foreseeable future, he was not unlawfully detained. Justice John Mansfield ordered Mr Al-Kateb's release in April 2003, pending an appeal.

Mr Al Khafaji, 31, is an Iraqi national who fled with his family to Syria in 1980. He arrived in Australia in January 2000. His application for a protection visa was unsuccessful and he asked to return to Syria. The Federal Court ordered his release from detention as there was no real prospect of removal in the reasonably foreseeable future. The Minister appealed to the Full Court. In August 2003, on application from the federal Attorney-General, the High Court ordered that both cases be removed into this Court to be heard together.

The High Court, by a 4-3 majority, held that Migration Act provisions requiring the continued detention of unlawful non-citizens are not invalid. Under the Act, detention must continue until an unlawful non-citizen is either removed from Australia, deported or granted a visa. The majority held that as a purpose of detention was the eventual removal of unlawful non-citizens the detention was not prohibited by the Constitution. Accordingly, the Court dismissed Mr Al-Kateb's appeal and allowed the Minister's appeal in Mr Al Khafaji's case.

- *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.*