

Federal Court Decision: Another bite at the Cherry for rejected Refugees

by Janet Fife-Yeomans and Gemma Jones via stan - Daily Telegraph Oz *Sunday, Jul 21 2013, 9:45am*
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What this means is that previously rejected asylum seekers have an avenue of appeal and would be eligible to apply for refugee status and be processed again.

Border protection blunder opens door to refugees under High Court ruling

A COURT ruling has exposed an embarrassing loophole in the government's border protection laws that could leave the door open to thousands of asylum seekers who have already been rejected as refugees.

Immigration Minister Tony Burke was yesterday awaiting urgent legal advice about appealing against the decision to the High Court.

Migration lawyers said thousands of illegal immigrants, including those in detention, who had already exhausted every avenue of appeal to stay in the country had effectively been given the green light to start all over again with fresh claims because of amendments to the Migration Act.

"It will paralyse the system and clog the courts even further, costing millions," Sydney migration lawyer Adrian Joel said yesterday. "It is a tremendous advertisement to the people-smugglers."

The amendment to the act, passed in March last year with the help of the Greens, was meant to apply only to new cases. The so-called "complementary provisions" allowed asylum seekers who could not prove they would be persecuted if they returned to their home countries to claim they would suffer "significant harm", giving them more leeway to qualify for protection visas.

At the time, the then-immigration minister Chris Bowen gave parliament the examples of women fleeing honour killings or people fearing persecution on the grounds of being gay or lesbian.

But the full bench of the Federal Court has handed back a protection visa to a Bangladeshi Christian - who has been in Australia since 1996 - and said the amendment was not restricted to new cases but open to people who had already been fully processed, such as the man from Bangladesh.

The judges - Chief Justice James Allsop, Justice Robert Buchanan and Justice John Griffiths - granted the unnamed man a visa despite being told he had only claimed refugee status when he was arrested more than nine years after his arrival in Australia.

He had told them he would be in danger from fanatical Muslims if he went back to Dhaka where his parents' house had already been attacked. It is the latest court ruling to blow out the government's definition of "significant harm" to include a NZ criminal in danger of retribution from bikies if he went home and a Nigerian cocaine-smuggler who said he would face a drugs trial if deported to Nigeria under his home country's double-punishment of drug offenders laws.

There are already 190 similar appeals using the "complementary provisions" going through the tribunals and Federal Circuit Court (the former Federal Magistrates Court).

They have all been put on hold pending any appeal in the Bangladeshi case.

Mr Joel said it appeared the amendment to the Migration Act had been wrongly drafted to leave the loophole open.

Mr Burke conceded the Federal Court's decision "has implications for the appeal rights of people who would otherwise be at the end of their legal process" and the government would "seek leave to appeal the decision".

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Link to detailed Federal Court Decision:

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCAFC/2013/71.html>

<http://tinyurl.com/kyvzrb4>

Jungle Drum Prose/Poetry. <http://jungledrum.lingama.net/news/story-706.html>