

Minister for Immigration and Citizenship v SZMDS [2010] HCA 16 26 May 2010

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Facts

- SZMDS was a Pakistani citizen who made an application for asylum on the basis that he was homosexual and that this was persecuted in Pakistan.
- His application was rejected. In particular, the RRT stated that the fact that he had returned to Pakistan briefly and not applied for asylum in the UK when he was there showed he did not have a genuine fear of persecution.
- SZMDS appealed citing jurisdictional error and that the decision was irrational and illogical.
- At first instance, the Federal Court agreed.
- The Minister then appealed to the HCA.

Issue

- Was the decision of the RRT irrational and illogical and therefore a jurisdictional error?

Held

- In a split decision, the Court narrowly allowed the Minister's appeal.
- They acknowledged that the fact a decision was "irrational and illogical" may be a jurisdictional error, but that it is a high threshold.
- Simply disagreeing with the rationale of the Tribunal is not enough to make it "irrational and illogical". The question is, is it so irrational and illogical that no rational person could have made it, or the conclusion was simply not open to them on the facts?
- The Court held that taking everything into account, even if you disagreed with the Tribunal's decision, it was not irrational and illogical - they did have a reason for making their decision.

Quotes

- "In the context of the Tribunal's decision here, "illogicality" or "irrationality" sufficient to give rise to jurisdictional error must mean the decision to which the Tribunal came, in relation to the state of satisfaction required under s 65, is one at which *no rational or logical decision maker could arrive on the same evidence...* Not every lapse in logic will give rise to jurisdictional error. A court should be slow, although not unwilling, to interfere in an appropriate case." (Crennan and Bell JJ at [130])
- "A decision might be said to be illogical or irrational if only one conclusion is open on the

evidence, and the decision maker does not come to that conclusion, or if the decision to which the decision maker came was simply not open on the evidence or if there is no logical connection between the evidence and the inferences or conclusions drawn. None of these applied here." (Crennan and Bell JJ at [135])

Read more

- The full text of the decision is available at <http://www8.austlii.edu.au/cgi-bin/sign.cgi/au/cases/cth/HCA/2010/16>

Law case summary from www.lawcasesummarries.com