

NOTE: THE CONFIDENTIALITY OF THE NAME OR IDENTIFYING PARTICULARS OF THE APPELLANT AND OF HIS CLAIM OR STATUS MUST BE MAINTAINED PURSUANT TO S 151 OF THE IMMIGRATION ACT 2009.

IN THE SUPREME COURT OF NEW ZEALAND

**SC 89/2012
[2013] NZSC 9**

BETWEEN

M
Appellant

AND

MINISTER OF IMMIGRATION
Respondent

Court: McGrath, William Young and Glazebrook JJ

Counsel: Appellant in person
M Coleman for respondent

Judgment: 4 March 2013

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant is to pay costs of \$2,500 to the respondent plus reasonable disbursements.**
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REASONS

[1] Mr M is Romanian. His application for refugee status failed, as did his appeal to the Refugee Status Appeals Authority.¹ Judicial review of the Authority's decision failed,² and his appeal against the refusal of judicial review also failed.³

¹ *Refugee Appeal No 76339* [2010] NZAR 386 (RSAA).

² *M v Refugee Status Appeals Authority* HC Auckland CIV-2010-404-3298, 17 September 2010.

³ *M v Refugee Status Appeals Authority* [2012] NZCA 83.

[2] Mr M is currently claiming the status of a protected person (under the Immigration Act 2009⁴). That has been declined and his appeal to the Immigration and Protection Tribunal has yet to be determined.

[3] Mr M applies for leave to appeal against a judgment of the Court of Appeal.⁵ In that decision, the Court dismissed an appeal from a decision of Courtney J⁶ which had struck out Mr M's claim for judicial review of a decision of Immigration New Zealand.

[4] The current application for leave to appeal relates to judicial review proceedings challenging a decision not to allow his wife and child entry into New Zealand.

[5] Mr M's first judicial review proceeding related to the refusal of Immigration New Zealand to allow Mr M's wife and child to board a flight from Hong Kong to New Zealand. Immigration New Zealand took the view that they were not genuine tourists and therefore were ineligible for the tourist visa waiver scheme.

[6] Peters J struck out those proceedings on the basis that the decision not to allow them to board the flight was not open to judicial review and was in any event time barred.⁷ A second judicial review proceeding was filed and this time was struck out by Courtney J.⁸

[7] On appeal against Courtney J's decision, the Court of Appeal decided that:⁹

- (a) there is no right to family life recognised at common law in New Zealand;
- (b) the refusal to allow Mr M's family to visit him did not breach s 9 of the New Zealand Bill of Rights Act 1990; and

⁴ Sections 130 and 131,

⁵ *M (CA587/11) v Minister of Immigration* [2012] NZCA 489.

⁶ *M v Minister of Immigration* [2011] NZAR 710 (HC).

⁷ *M v Minister of Immigration* HC Auckland CIV-2011-404-1517, 10 May 2011.

⁸ *M v Minister of Immigration*, above n 2.

⁹ *M (CA587/11) v Minister of Immigration*, above n 1.

(c) there had been no discrimination against Mr M on the basis of his Romanian nationality contrary to s 17 of the Bill of Rights Act.

[8] In addition, the Court of Appeal held that the claim is time barred under s 247(1) of the Immigration Act 2009, which requires review proceedings to be commenced within 28 days of the date of any decision.

[9] The Court also held that s 97(4) means that any decisions not to allow a person to board an aircraft are non-appealable and non-reviewable, except on the grounds that the person comes within s 97(3)(b). Mr M and his wife and child do not come within that subsection (which includes among other things New Zealand citizens and residents).

[10] The Court of Appeal also noted Courtney J's finding that the claim was substantively the same claim as had been struck out by Peters J, although it did not find it necessary to deal with the abuse of process ground.

[11] Mr M seeks to challenge all of the Court of Appeal's findings in his proposed appeal and further claims that the Court incorrectly applied the strike out principles.

[12] We decline leave on the basis that any proposed appeal has no prospect of success for the reasons set out at [8] and [9] above.¹⁰ Striking out the claim was clearly justified.

[13] The application for leave to appeal is dismissed. The applicant is to pay the respondent costs of \$2,500 plus reasonable disbursements.

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¹⁰ We make no comment on the substantive grounds set out at [7].