

NOTE: THE CONFIDENTIALITY OF THE NAME OR IDENTIFYING PARTICULARS OF THE APPLICANT 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 1/2015
[2015] NZSC 61**

BETWEEN

K
Applicant

AND

IMMIGRATION AND PROTECTION
TRIBUNAL
First Respondent

CHIEF EXECUTIVE OF THE
MINISTRY OF BUSINESS,
INNOVATION AND EMPLOYMENT
Second Respondent

Court: Elias CJ, William Young and O'Regan JJ

Counsel: Applicant in Person
A R Longdill and O M Klaassen for Respondent

Judgment: 14 May 2015

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This is an application for leave to appeal against a decision of the Court of Appeal, in which it declined leave for the applicant to commence judicial review proceedings against the decision of the first respondent, the Immigration and

Protection Tribunal.¹ In doing so, the Court of Appeal effectively confirmed a decision of the High Court dismissing the applicant's application for leave to commence judicial review proceedings.²

[2] The Tribunal abides the decision of the Court. The second respondent, the Chief Executive of the Ministry of Business, Innovation and Employment, opposes the application for leave on both jurisdictional grounds and on its merits.

[3] In relation to jurisdiction, the second respondent argues that under s 249, as it was at the time the application for leave to appeal to this Court was filed, a decision of the Court of Appeal declining leave for judicial review proceedings to be commenced in the High Court was final. However, there was nothing in s 249 as it was at the relevant time indicating that such a decision was final and there is no other basis on which a conclusion that a decision of the Court of Appeal was final can be founded. We therefore proceed on the basis that this Court does have jurisdiction and will consider the application for leave to appeal to this Court on its merits.³

[4] The application for leave to appeal to this Court sets out three grounds of appeal that the applicant would pursue if leave were granted.

[5] The first is "misconsideration of the evidence, in breach of the Evidence Act 2006". This appears to be a complaint against the way the Tribunal dealt with new evidence, namely a decision of the Refugee Review Tribunal of Australia in a decision relating to the applicant's wife. The Court of Appeal took the view that there was no error by the Tribunal. In any event, factual error in itself could not found a judicial review application.

[6] The second ground is that the Tribunal misapplied s 130 and s 131 of the Immigration Act. The Court of Appeal concluded that this was a question of law

¹ *K v Immigration and Protection Tribunal* [2014] NZCA 585 (Randerson, Harrison and White JJ) [*K v IPT* (CA)].

² *K v Immigration and Protection Tribunal* [2014] NZHC 1800.

³ On 6 May 2015, the Immigration Amendment Act 2015 passed into law. Section 63 of the 2015 Act repealed and replaced s 249 of the Immigration Act 2009. Under the new section, a decision of the Court of Appeal to refuse leave to bring review proceedings in the High Court is final: s 249(5).

which could have been adequately dealt with in an appeal against the Tribunal's determination, but that in any event, if leave to appeal had been sought, it would not have been granted.⁴ No basis has been put forward to suggest that there was any error in principle in that evaluation by the Court of Appeal such as would justify an appeal to this Court.

[7] The third ground for a proposed appeal is that the Court of Appeal did not give the applicant sufficient time to advance his case. But the decision of the Court of Appeal reveals that the Court understood and considered the applicant's arguments and was not convinced of their merits. No error justifying leave is identified to appeal to this Court.

[8] The applicant also argues there are special circumstances justifying the grant of leave for him to commence judicial review proceedings. These are essentially matters arising from his apparent confusion about some procedural issues in the High Court. We do not see these as exceptional circumstances, given that they have not led to either the High Court or the Court of Appeal misunderstanding or failing to deal with the applicant's submissions.

[9] None of the matters raised by the applicant satisfy the test for the granting of leave to appeal to this Court. In particular, there is no matter of general or public importance and no appearance of any miscarriage of justice.

[10] In those circumstances the application for leave to appeal against the decision of the Court of Appeal is dismissed.

Solicitors:
Meredith Connell, Auckland for Respondent

⁴ *K v IPT (CA)*, above n 1, at [13].