Supreme Court of New Zealand
Te Kōti Mana Nui

2 September 2015

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

JIAXI GUO AND JIAMING GUO v MINISTER OF IMMIGRATION

(SC 124/2014) [2015] NZSC 132

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Jianyong Guo and Meihua Hong are Chinese citizens who came to live in New Zealand in March 2002. They were accompanied by their daughter, the first appellant, who was at that time 11 years of age. Two further children were born to the family in New Zealand, the second of whom is the second appellant. The family was granted residency in September 2006 on an application made by Mr Guo which listed the appellants and Mrs Hong as secondary applicants.

Mr Guo is subject to deportation by reason of his conviction and sentence of imprisonment on charges associated with the importation of pseudoephedrine. He had embarked on this enterprise prior to residency being granted and had not disclosed this to Immigration New Zealand. This non-disclosure was material to the grants of residency in favour of the appellants and because of it they too became subject to deportation.

Deportation notices were served on the appellants. They appealed against them to the Immigration and Protection Tribunal under s 207(1) of the Immigration Act 2009. The appellants argued that, under that section, there were exceptional circumstances of a humanitarian nature that meant that their deportation would be "unjust or unduly harsh", and that it would not in all the circumstances be contrary to the public interest to allow them to remain in New Zealand. The Tribunal dismissed their appeals, holding that deportation was not unjust or unduly harsh.

85 Lambton Quay, Wellington
P O Box 61 DX SX 11224
Telephone 64 4 918 8222 Facsimile 64 4 471 6924

The appellants subsequently applied to the High Court for leave to appeal against the Tribunal's decision under s 245(1) of the Act on the basis that the Tribunal had erred in law. That application for leave was unsuccessful. So too was a further application to the Court of Appeal. The appellants then sought leave to appeal to the Supreme Court. Leave was granted on the question whether the Court of Appeal was right to decline the appellants' applications for leave to appeal to the High Court against the Tribunal's decision to dismiss their appeals against deportation.

In a unanimous decision the Supreme Court has allowed the appeal. The appellants have been granted leave to appeal to the High Court on the question whether the Tribunal erred in law in concluding that it would not be unjust or unduly harsh to deport the appellants from New Zealand. The circumstances in which the Tribunal's decision was made were unusual insofar as neither of the appellants were themselves responsible for the misconduct that gave rise to their liability for deportation. In such circumstances it is arguable that a comparatively low level of injustice and hardship would be sufficient to make out the s 207(1) test. In this context careful analysis of the basis upon which the Tribunal's decision was reached is warranted. Such analysis reveals concern with several aspects of the Tribunal's application of s 207(1).

The Supreme Court's role in this proceeding is not to determine whether the Tribunal's decision should be set-aside. However for the reasons set out above the Court does consider that it is arguable that the Tribunal erred in law in concluding that it would not be unjust or unduly harsh to deport the appellants and that it is appropriate to grant leave to appeal to the High Court.

Contact person: Gordon Thatcher, Supreme Court Registrar
(04) 471 6921