

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. SEE

<http://www.legislation.govt.nz/act/public/2009/0051/latest/DLM1440836.html>

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 62/2018
[2018] NZSC 91**

BETWEEN

WK
Applicant

AND

REFUGEE AND PROTECTION OFFICER
Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: R S Pidgeon and I Rasheed for Applicant
S P Jerebine and M Majeed for Respondent

Judgment: 10 October 2018

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.

REASONS

Background

[1] Since 2012 Mr WK has made four unsuccessful claims under the Immigration Act 2009 for refugee or protected person status. He is Turkish and came to New Zealand in 2011.

[2] On his fourth claim (made on 21 March 2017), the Refugee and Protection Officer considered the claim to be manifestly unfounded, abusive and a repeat of

previous claims. On 8 May 2017 he therefore exercised his discretion under s 140(3) of the Immigration Act to refuse to consider the claim.

[3] Mr WK applied for judicial review of this decision which was dismissed by the High Court.¹ The High Court also dismissed his attempt to introduce new evidence during and after the hearing. Mr WK appealed to the Court of Appeal, seeking also to adduce further evidence.² Both his applications were dismissed. Mr WK was deported to Turkey on 2 August 2018.

Application

[4] Mr WK seeks leave to appeal on a number of grounds he says are legal issues of general or public importance, including the interpretation of s 140, the threshold for the admission of evidence and the standard of review. He also challenges the application of the law to his case.

Our assessment

[5] Nothing raised by Mr WK suggests that the result would have been different even under the legal tests he advocates. In any event, as the Crown submits, the appeal is moot because Mr WK has left New Zealand.³ It is thus not in the interests of justice to hear the proposed appeal.

Result

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

Solicitors:
IR Legal, Wellington for Applicant
Crown Law Office, Wellington for Respondent

¹ *WK v The Refugee Protection Officer, MBIE, Auckland* [2018] NZHC 514 (Woodhouse J).

² *WK v Refugee and Protection Officer* [2018] NZCA 258 (Asher, Venning and Mander JJ).

³ Immigration Act 2009, s 142 provides that, where a claimant leaves New Zealand “his or her claim (including any subsequent claim) under [Part 5 of the Immigration Act] must be treated as withdrawn”.