



Supreme Court of New Zealand

20 July 2009

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**WILLIE YE, CANDY YE AND TIM YE v MINISTER OF IMMIGRATION AND
YUEYING DING (SC 53/2008)**

**ALAN QIU AND STANLEY QIU v MINISTER OF IMMIGRATION AND HE QIN
QIU AND XIAO YUN QIU (SC 56/2008)**

**XIAO QIONG HUANG AND YONG MING CUI AND JARVIS CUI v THE
MINISTER OF IMMIGRATION AND THE ATTORNEY-GENERAL (SC 74/2008)**

[2009] NZSC 76

[2009] NZSC 77

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 www.courtsofnz.govt.nz.

These three appeals concerned the lawfulness of decisions made by immigration officers. The decisions were made during the course of proceedings designed to remove from New Zealand overstayer parents of children born in New Zealand at a time when those children acquired New Zealand citizenship at birth. The principal issue concerned the effect and reach of s 47(3) of the Immigration Act 1987 and the weight to be given to the children's interests. The subsection provides that

overstayers may be allowed to remain in New Zealand if they can show, firstly, exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh to remove the overstayer and, secondly, that it would not be contrary to the public interest to allow them to remain.

The Supreme Court has held that this test was applicable to the circumstances in which the officers made their decisions, but was not properly applied by the officers. Hence each decision was made on an incorrect legal basis. In two of the cases the Immigration Service has been ordered to reconsider the removal issue on the correct legal basis and, in the third, the appellant has been denied any remedy because the Court was satisfied that the officer's decision to confirm removal must inevitably have been the same on a correct application of the law.

Contact person: Gordon Thatcher, Supreme Court Registrar (04) 914 3545