

**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 104/2020  
[2022] NZSC 27**

BETWEEN H (SC 104/2020)  
Appellant

AND MINISTER OF IMMIGRATION  
Respondent

Hearing: 20 July 2021

Court: Winkelmann CJ, William Young, Glazebrook, O'Regan and  
Arnold JJ

Counsel: R E Harrison QC and M Lee for Appellant  
R A Kirkness and E G R Dowse for Respondent

Judgment: 25 March 2022

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### **JUDGMENT OF THE COURT**

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**A There is no order for costs.**

**B Costs in the courts below should be dealt with by those courts.**

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### **REASONS**

#### **Introduction**

[1] The majority's judgment of 23 December 2021 dismissed Mr H's appeal to this Court and reserved costs.<sup>1</sup> The majority found that the challenged instruction,

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<sup>1</sup> *H (SC 104/2020) v Minister of Immigration* [2021] NZSC 192 at [37]–[38].

instruction A5.30 of the Immigration New Zealand Operational Manual, could be interpreted as requiring a rational connection between a residence class visa applicant's association with an organisation said to have committed gross human rights abuses and their character. On that basis, it was not unreasonable, unfair or ultra vires.<sup>2</sup>

### **Submissions**

[2] The Minister of Immigration submits that costs should follow the event in the normal manner but seeks a reduced costs award of \$12,500. No disbursements are sought. The reduction recognises the fact that Mr H succeeded in obtaining leave over the Minister's opposition at an oral leave hearing and that, although the instruction was held to be valid, this was through an interpretation not initially advanced by the Minister in written submissions.

[3] Mr H submits that costs should lie where they fall. In his submission the formal outcome does not fairly reflect either the reality or the intrinsic merits of the situation or the overall litigation history between these parties. He submits that Immigration New Zealand has always strongly argued for a broad interpretation of the challenged instruction. This broad interpretation was rejected by this Court. Further, the majority judgment identified drafting flaws and suggested "that the instruction should be redrafted to make it explicit that there has to be a rational connection between the association with the organisation and the character of an applicant".<sup>3</sup>

### **Our assessment**

[4] We accept Mr H's submission that costs should lie where they fall. The interpretation of the instruction leading to the dismissal of the appeal was one suggested by the Court. We agree it is relevant that the Court suggested drafting changes to make the position clear.

### **Result**

[5] We make no order for costs, which are to lie where they fall.

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<sup>2</sup> At [32].

<sup>3</sup> At [33].

[6] Costs in the courts below should be dealt with by those courts in light of our judgment in the appeal and this costs judgment.

Solicitors:

Mark Lee Lawyers, Auckland for Appellant

Crown Law Office, Wellington for Respondent