



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

25 March 2022

**MEDIA RELEASE**

H (SC 104/2020) v MINISTER OF IMMIGRATION

(SC 104/2020) [2021] NZSC 192

**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](http://www.courtsofnz.govt.nz).

**Suppression**

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.

**Delay in publication**

This judgment was released to the parties on 23 December 2021. It was not released publicly at the time so that counsel could confer about any suppression issues.

**Background**

Mr H issued proceedings for judicial review challenging the validity of instruction A5.30 of the Immigration New Zealand (INZ) Operational Manual.

Mr H had been an officer of the Chinese Public Security Bureau (PSB). For the purpose of this case the parties accepted that the PSB has committed gross human rights abuses. Mr H had abandoned his association with the PSB and, in an application which was ultimately successful, was recognised as a refugee in New Zealand. However, Mr H’s application for residence in New Zealand was refused on character grounds because of his association with the PSB. Subsequent appeals were also dismissed.

INZ relied on instruction A5.30 in declining to grant Mr H a residence visa. A5.30 provides, among other things, that residence applications will usually be declined where the applicant has or has had an association with, membership of, or involvement with, any government, regime, group or agency that has advocated for or committed gross human rights abuses.

## **Decision**

This Court (by majority consisting of William Young, Glazebrook, O'Regan and Arnold JJ) dismissed the appeal. The majority held that the instruction was not unreasonable as long as it was interpreted as requiring a rational connection between an applicant's association with an organisation said to have committed gross human rights abuses and their character. This requires the decision-maker to consider the nature and extent of an applicant's association with the human rights abuses (or the other activities in the instruction). The Court accepted that association with an organisation can indicate that someone is not of good character. But this must be subject to that person's level of knowledge of the alleged activities at the relevant time; the nature, duration and extent of their association with or involvement in those activities; and the level of free choice they had in their association with the organisation.

The Chief Justice would have allowed the appeal. She did not agree with the majority that the instruction could be interpreted as requiring a rational connection between an applicant's association with an organisation said to have committed gross human rights abuses and their character. The Chief Justice said that the majority's interpretation of the instruction required reading in words that change the meaning of the instruction. On her interpretation, the wording and context of the instruction was such that any non-minimal or non-remote association with such an organisation would disqualify someone from being of good character, irrespective of the nature and extent of the association with the particular alleged activities of the organisation. Therefore the instruction did not reflect on a person's character and, as such, was unreasonable. A person's character must be assessed based on their personal character and conduct.

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