IN THE SUPREME COURT OF NEW ZEALAND

SC 5/2016
[2016] NZSC 39

BETWEEN	KULBIR SINGH AND NAVJOT KAUR Applicants
AND	THE CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: R J Hooker for Applicants
I C Carter and I M G Clarke for Respondent

Judgment: 19 April 2016

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicants are Indian citizens who have been in New Zealand as overstayers since April 2004. They have three children, one of whom (now nearly 12) is a NZ citizen. They are facing deportation and challenged the process and outcome of the consideration by an immigration officer of their cases under s 177 of the Immigration Act 2007. The immigration officer had not cancelled the deportation orders against them as they had hoped. Their application for review was dismissed by Brewer J[1] and their subsequent appeal to the Court of Appeal was also dismissed.[2]

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1 *Singh v Chief Executive of the Ministry of Business, Innovation and Employment* [2014] NZHC 1916, [2014] NZAR 1068.

2 *Singh v Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZCA 592, [2016] NZAR 93.

[2] The grounds of the proposed appeal are that the Court of Appeal:

(a) should have, but did not, interpret s 177 so as to be as consistent as possible with s 27(2) of New Zealand Bill of Rights Act 1990;

(b) wrongly took a *Wednesbury* approach to whether the immigration officer's decision was unreasonable; and

(c) should have, but did not, draw an inference adverse to the immigration officer by reason of that officer not giving reasons for his decision.

[3] The applicants' underlying challenge to deportation seems to be largely premised on the contention that prejudice to the child who is a New Zealand citizen (in the sense that the deportation of her parents and siblings will not be in her best interests) is a trumping consideration. The immigration officer did not accept that it was. There is nothing particularly surprising about that or any other aspect of the decisions of the immigration officer.

[4] Section 177 has been recently amended and we accept there may be points about the interpretation and limits of the new section that would meet the general or public importance test. But we do not see the facts of this case or the arguments that the applicants want to advance as providing a suitable vehicle for addressing such points. We likewise do not see any risk that there will be a miscarriage of justice if leave is not given.

Solicitors:
Vallant Hooker & Partners, Auckland for Applicants
Crown Law Office, Wellington for Respondent