FEDERAL CIRCUIT COURT OF AUSTRALIA

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| SZUVZ v MINISTER FOR IMMIGRATION & ANOR | [2015] FCCA 2346 |

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| Catchwords:  COSTS – Fixed order as to costs following settlement prior to a final hearing. |

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| Legislation:  *Federal Circuit Court Rules 2001* (Cth) |

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| Applicant: | SZUVZ |

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| First Respondent: | MINISTER FOR IMMIGRATION & BORDER PROTECTION |

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| Second Respondent: | REFUGEE REVIEW TRIBUNAL |

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| File Number: | SYG 2155 of 2014 |

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| Judgment of: | Judge Driver |

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| Hearing date: | 30 March 2015 |

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| Delivered at: | Sydney |

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| Delivered on: | 30 March 2015 |

### REPRESENTATION

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| Solicitors for the Applicant: | Mr F Varess of Fragomen |

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| Solicitors for the Respondents: | Ms B Griffin of Australian Government Solicitor |

### ORDERS

1. The first respondent is to pay the applicant’s costs and disbursements of and incidental to the application, fixed in the sum of $7,000.

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| FEDERAL CIRCUIT COURT  OF AUSTRALIA  AT SYDNEY |

SYG 2155 of 2014

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| SZUVZ |

Applicant

And

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| minister for immigration & border protection |

First Respondent

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| REFUGEE REVIEW TRIBUNAL |

Second Respondent

REASONS FOR JUDGMENT

(revised from transcript)

1. I have before me an oral application for an order for costs in this matter in circumstances where the Minister has conceded jurisdictional error, but the parties have been unable to reach agreement as to the quantum of costs that should flow the Minister’s concession. The applicant relies upon an affidavit by his solicitor, Mr Farid Varess filed on 27 March 2015. That details solicitor and own client costs and disbursements of $14,116.48.
2. That comprises solicitor’s costs of $6,945 plus APE at five per cent, GST at 10 per cent, a court setting down fee at $650 and counsel’s fees of $5,445. Counsel’s note of his fees is attached to the affidavit indicating that counsel was involved in reviewing the decision and the proposed grounds of review for half a day and reviewing the Court book and draft amended grounds for one day.
3. It is apparent that the solicitors and counsel for the applicant thoroughly prepared the application. The amended application filed on 18 November 2014 six detailed grounds of review of which the last is an addition in the amended grounds and some particulars of ground 1 have been amended. It is apparent that the attack on the Tribunal decision on the basis of the amended application was a broad ranging and detailed one. In the event, the Minister conceded error on the basis of the use of certain country information.
4. The Court has put in place a scale of costs for migration proceedings based on the Court’s assessment of what costs can be considered to be reasonably and properly incurred on a party and party basis for proceedings of average complexity at various stages. It is a matter for applicants and their legal advisers what legal costs they wish to incur in preparing for a hearing on asserted jurisdictional error. The same applies to the Minister.
5. There needs to be good reason to depart from the scale. In this case, if the matter had gone to a hearing, I would have had little difficulty in accepting that costs of $10,000 had been reasonably and properly incurred on behalf of the applicant. That is, indeed, what the applicant seeks in the present circumstances. However, the matter was resolved prior to hearing. It is a matter of judgement for instructing solicitors, when, whether and what extent counsel is engaged prior to a hearing as it is a matter for applicants to give appropriate instructions as to how much work is to be undertaken to prepare applications for judicial review.
6. In the present case, the solicitors would receive effectively no remuneration if the Court scale was applied because of their liability to counsel and other disbursements. As against that, it is the solicitor’s choice how much time is spent and to what extent counsel is involved. That must carry some risk. The Minister submits that costs should be limited to $6,000. I am persuaded that some adjustment above that should be made, but certainly not to the extent that the applicant seeks.
7. I will order that the first respondent is to pay the applicant’s costs and disbursements of and incidental to the application, fixed in the sum of $7,000.

I certify that the preceding seven (7) paragraphs are a true copy of the reasons for judgment of Judge Driver

Associate:

Date: 28 August 2015