

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Civil

Case No. 19/45 SC/JR

BETWEEN: Zheng Wu Wei

Claimant

AND: Minister of Internal Affairs

First Defendant

Vanuatu Immigration Services

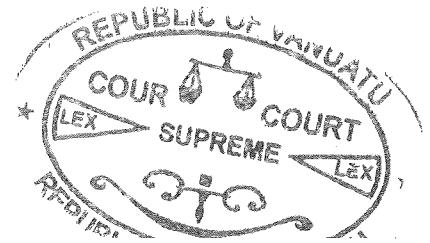
Second Defendant

Date of Hearing: 20 February 2019
By: Justice G.A. Andrée Wiltens
Counsel: Mr W. Zheng in person, with his friend Mr Li
Mrs F. Williams for the Defendants
Date of Decision: 1 March 2019

JUDGMENT

A. Introduction

1. This is an Immigration case. Mr Zheng had been granted a Special Purposes Visa in March 2016. Upon the expiry of that Visa, Mr Zheng has sought to renew, extend or vary his permission to remain in Vanuatu so as to complete his original work assignment to Vanuatu. Those attempts failed and he sought urgent judicial review seeking specific remedies, namely: (i) a mandatory order requiring the Immigration Service to grant him a work visa, (ii) an order prohibiting his deportation, (iii) an order quashing a penalty notice of



16 April 2018 and a second penalty notice of 24 May 2018, and an order quashing a removal notice issued by the Minister on 31 December 2018.

B. Background

2. Mr Zheng filed his application on 17 January 2019. On the basis of the information provided, I produced a Judgment making certain directions to progress the matter, including the return of Mr Zheng's passport, and directing the Minister of Internal Affairs to comply with section 58(5) and (6) of the Immigration Act prior to any further removal steps being taken against Mr Zheng. I made plain the Court had no authority to grant Mr Zheng a visa which permitted him to work, and that therefore Mr Zheng should desist from all forms of employment. I scheduled a first conference for 6 February 2019.
3. That Conference was adjourned to 20 February 2019, due to a number of documents being filed by the defendants on the morning of the Conference, which neither Mr Zheng nor the Court were able to consider at such short notice.
4. That further Conference was also unsatisfactory as Mr Zheng had filed more papers, apparently the day prior, but they were served on Mrs Williams at the Conference – and I first saw the additional material at that time as well. I determined the best course of action was to decide the “threshold issue” under Rule 17.8 of the Civil Procedure Rules No 49 of 2002 on the papers presented to the Court. Both Mrs Williams and Mr Zheng were content with that – Mr Zheng on condition that I listened to some recordings he had made and which were on a memory stick.

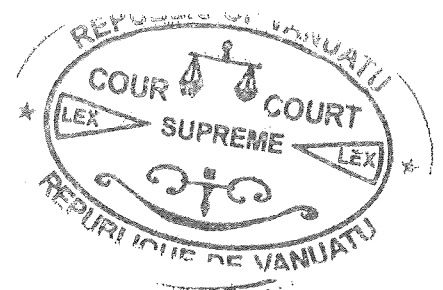
C. The 17 January 2019 Judgment

5. It is now plain that a number of factual assertions made by Mr Zheng are either contested or admittedly incorrect. For instance, Mr Zheng in his oral submissions admitted he has not paid either of the penalty fines imposed against him – contrary to what he previously maintained. While Mr Zheng maintains that on numerous occasions he has applied to re-new, extend or vary his now-expired Special Category Visa, what he means when he says that, is that he and/or his lawyers have requested that orally and in writing. However, it is clear that he has not at any stage completed the necessary application form, and tendered that document with the necessary supporting documents, to make a formal application. In fact Mr Zheng complains bitterly about being unable to now obtain the necessary supporting documents due to the conspiracy against him.
6. My direction to the Minister to respond under section 58 of the Immigration Act to Mr Zheng's challenge was premised on the basis that Mr Zheng had formally applied for a new visa. In fact he has not. My direction was therefore inappropriate, and of no effect.
7. I commented on the penalty notices served on Mr Zheng. The position in relation to those documents has now been clarified – the Act recorded was simply a typo, and the incorrect provision was cited in the body

of the document. I am satisfied that Mrs Williams has explained away those anomalies. I noted also that Mr Zheng, in his oral submissions, admitted that he had been working in relation to the liquidation of his previous parent company post his visa expiry.

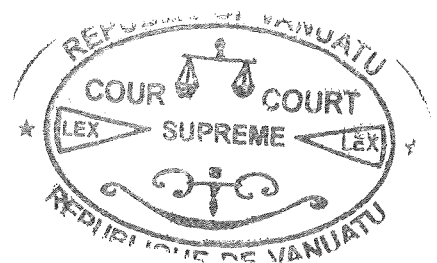
D. Rule 17.8

8. The Civil Procedure Rules provide a safeguard mechanism to prevent pointless and costly judicial review proceedings where there is no prospect of success. Therefore the first issue to be determined in all judicial review proceedings is whether the Claimant has an arguable case, that there has been no undue delay in bringing the case, and that the claimant is directly affected by the decision complained of. Only if those threshold requirements are met can the judicial review proceed to a full hearing on the merits.
9. There is no suggestion here of undue delay; nor that Mr Zheng is not directly affected. The defence presented By Mrs Williams is that there is no decision of the Minister to be challenged. Further, that section 58 of the Immigration Act has no application in relation to the 2 penalty notices served on Mr Zheng. Lastly, Mrs Williams submitted that there can be no challenge to the Minister's decision to issue a removal notice to Mr Zheng on the basis that Mr Zheng has "appealed" that in May 2018.
10. Accordingly, Mrs Williams submitted the application for judicial review should be struck out, with costs.
11. Mr Zheng has filed numerous sworn statements, which contain serious allegations. He alleges a conspiracy involving senior Government officials and officers of Vanuatu Broadcasting and Television Limited ("VBTC"). The conspiracy was put into effect while Mr Zheng was overseas, and it involved ending a joint venture established to operate Vanuamadia Digital Media Limited ("Vanuamadia") and putting the company into liquidation. The conspiracy then went further to preclude Mr Zheng being able to return to Vanuatu for work purposes – he having been the principal officer of Vanuamadia and having obtained his Special Category Visa due to that. Mr Zheng was adamant he had to be able to remain in Vanuatu to protect the interests of investors in the joint venture throughout the liquidation process; and for that purpose he had to have the ability to work.
12. Mr Zheng sees all sorts of corruption in the course of his attempting to be able to remain lawfully in Vanuatu; and he readily accuses very senior Government officials of lying and requesting bribes before they would assist him. He maintained that his recording of conversations with officials would demonstrate this. I listened carefully to the self-serving statements recorded on the memory stick and compared that to the notes he had provided to assist – but I was unable to hear any bribe being requested, nor any lies promulgated. In my view, the officials demonstrated commendable patience and restraint in the face of rising agitation by Mr Zheng when he did not get his way.



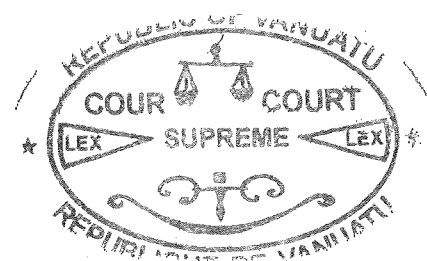
E. Discussion

13. As Mr Zheng has not, at any stage since his visa expired, formally applied for a work visa, utilising the appropriate form and filing that with the necessary supporting documentation, there has not been a decision by Immigration Department official to decline such application. It follows, that there can be no review by the Minister of a non-decision.
14. Mr Zheng was permitted to land in Vanuatu on 16 April 2018 on a visitor's visa. He freely admitted that he had been working after his Special Category Visa had expired. Clearly, the Minister had the authority and the necessary grounds to issue both the penalty notices on the evidence before him.
15. Once the Visitor's Visa had expired on 16 May 2018, and without any application to re-new the same or to apply for any other visa, Mr Zheng became an illegal immigrant; and he has remained of that status ever since. Furthermore, pursuant to section 34 of the Immigration Act, Mr Zheng was therefore not eligible to apply for or obtain a legitimate visa of any kind. Officials told him as much on a number of occasions, and the recordings make it plain he was advised he would have to leave to be able to apply for any type of visa.
16. The Minister issued a removal notice to Mr Zheng on 31 December 2018, pursuant to section 53 of the Immigration Act. He clearly had authority to do so.
17. There is a dispute regarding whether or not Mr Zheng responded to the removal notice within the requisite time period. Mr Zheng has produced a letter he says he sent to the Minister dated 9 January 2019 – the Minister says he has not received that or any other correspondence. The document Mr Zheng has supplied to the Court has a chop on it, in the top right-hand corner, from the Ministry of Internal Affairs; and it is endorsed in handwriting: "Edwin 2:52pm 2019.1.9".
18. I consider it more likely than not that Mr Zheng's version as to this is correct. Accordingly, it is for the Minister to determine whether or not what Mr Zheng detailed in his response is good reason to not have Mr Zheng removed. This Court cannot make that determination.
19. Finally, I comment that Mr Zheng feels very strongly that he has been hard done by. Vanuamadia should not have been liquidated in his view, although both this Court and the Court of Appeal disagree with him. However, now that Vanuamadia has been liquidated, he considers that he needs to be in Vanuatu, with the ability to work, to safeguard the interests of the investors in Vanuamadia – he feels he cannot do that effectively from overseas. However, as well as his strong beliefs, he is also very willing to ascribe unfortunate motives to those who he perceives to stand in his way. Further, in my view, he is also quite devious. He has clearly given this Court a number of false inferences to draw to his advantage; and he has later used the Court's incorrect understanding of the facts to attempt to further his advantage.



F. Conclusion

20. As commented earlier, this Court has no authority to make a mandatory order requiring the Immigration Service to grant Mr Zheng a work visa.
21. This Court has no authority to make a general order prohibiting Mr Zheng's deportation.
22. The 2 penalty notices of 16 April 2018 and 24 May 2018 appear to have been validly issued on proper grounds. It would be wrong for this Court to quash them.
23. This Court could quash the removal notice issued by the Minister on 31 December 2018, in appropriate circumstances. That does not appear to be the case here. Mr Zheng has been in Vanuatu without any kind of visa since 16 May 2018. The removal notice is warranted in those circumstances.
24. Mr Zheng's application for judicial review is accordingly dismissed, in its entirety. There is simply no arguable case.
25. Mr Zheng is to pay the costs of the application – which I set at VT 75,000. That is to be paid within 7 days.
26. The Minister is at liberty to proceed with removal or otherwise in his discretion.
27. Lastly, I comment in relation to Mr Zheng twice being forced to hand over his Passport. The first was apparently for the Immigration Department to confirm his exact name to ensure the Penalty Notices were properly issued. The second was so that the passport could be held pending Mr Zheng's response to the removal notice.
28. This Court strongly disapproves of this conduct.
29. Mr Zheng's full name was already well known to the Minister and the Department from his initial Special Category Visa application. This excuse for taking Mr Zheng's passport is flatly rejected.
30. Further, Mr Zheng was not obliged to respond to the Minister – he could have chosen to simply leave the Republic, save that he needed his passport to be able to travel. It cannot be a justification to hold someone's passport pending that person's response to some formal documentation being served on him. This excuse is also flatly rejected.
31. If it is indeed Immigration Department procedure to take passports from individuals in those circumstances, as was submitted in evidence, it is a practice that should immediately and permanently stop. Passports are the property of the individual. They can only be seized under Warrant issued by a Court, if there are strong grounds to suspect it is a false or forged document, or if it is an exhibit in some form of alleged criminal

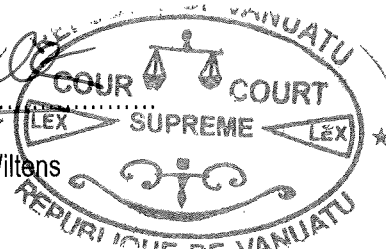


offending. In the vast majority of cases, the Immigration Department has the right only to inspect individual's passports, not to seize them.

DATED at Luganville this 1st day of March 2019

BY THE COURT

G.A. Andrée Wiltens
Justice G.A. Andrée Wiltens

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "COUR" and "COURT" are positioned on either side of the scale. Below the scale, the word "SUPREME" is written in a larger font. The word "LEX" appears in two smaller boxes on either side of "SUPREME". The outer border of the seal contains the text "REPUBLIQUE DE VANUATU" at the bottom and "VANUATU" at the top.