Federal Court of Australia

PHTP v Minister for Immigration and Multicultural Affairs [2024] FCA 1170

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| Appeal from: | *PHTP and Minister for Immigration, Citizenship and Multicultural Affairs (Migration)* [2023] AATA 3536 |
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| File number(s): |  |
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| Judgment of: | **GOODMAN J** |
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| Date of judgment: | 11 October 2024 |
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| Catchwords: | **MIGRATION** – application for judicial review of a decision of the Administrative Appeals Tribunal concerning a visa cancellation decision – Minister conceded jurisdictional error – proposed consent orders – jurisdictional error established to the satisfaction of the Court – relief granted  |
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| Legislation: | *Migration Act 1958* (Cth), s 501(3A)  |
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| Cases cited: | *AJN23 v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCAFC 103*Kovalev v Minister for Immigration & Multicultural Affairs* [1999] FCA 557; (1999) 100 FCR 323*LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12; (2024) 98 ALJR 610*NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37; (2023) 97 ALJR 1005 *PHTP and Minister for Immigration, Citizenship and Multicultural Affairs (Migration)* [2023] AATA 3536*VNPC v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 921; (2022) 181 ALD 49 |
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| Division: | General Division |
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| Registry: | New South Wales |
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| National Practice Area: |  |
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| Number of paragraphs: | 8 |
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| Date of hearing: | 16 May 2024  |
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| Counsel for the Applicant: | Mr E Lovell-Jones |
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| Solicitor for the Applicant: | Legal Aid NSW |
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| Counsel for the First Respondent: | Ms K Hooper |
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| Solicitor for the First Respondent: | Australian Government Solicitor |
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| Counsel for the Second Respondent: | The second respondent filed a submitting notice |

ORDERS

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|  | NSD 1456 of 2023 |
| BETWEEN: | PHTPApplicant |
| AND: | MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRSFirst RespondentADMINISTRATIVE APPEALS TRIBUNALSecond Respondent |

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| order made by: | GOODMAN J |
| DATE OF ORDER: | 11 october 2024 |

**BY CONSENT, THE COURT ORDERS THAT:**

1. The title of the first respondent be amended to the “Minister for Immigration and Multicultural Affairs”.
2. A writ in the nature of certiorari issue directed to the second respondent, quashing the decision of the second respondent dated 30 October 2023.
3. A writ in the nature of mandamus issue requiring the second respondent to determine the applicant’s application to it according to law.
4. The first respondent pay the applicant’s costs of the proceeding, as agreed or taxed.

**BY CONSENT, THE COURT NOTES THAT:**

The first respondent concedes that the second respondent’s decision is affected by jurisdictional error. The second respondent failed to act on a correct understanding of the law, by having regard to the prospect of the applicant’s “indefinite detention” including when considering the legal consequences of the decision, a prospect which was later displaced by the decision of the High Court of Australia in *NZYQ v Minister for Immigration* [2023] HCA 37; (2023) 97 ALJR 1005; ***AJN23*** *v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCAFC 103. The second respondent’s erroneous conclusion as to the legal consequences of the decision was an error of law: *AJN23* at [33] and [34], and was material.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

GOODMAN J

1. The applicant is a citizen of Afghanistan, who has been in Australia since his arrival in January 2013. On 20 October 2017, the applicant was granted a Safe Haven Enterprise **visa**.
2. On 2 August 2022, a delegate of the first respondent **Minister** cancelled the visa pursuant to s 501(3A) of the *Migration Act 1958* (Cth). On 23 August 2022, the applicant sought revocation of that decision. On 17 August 2023, a delegate of the Minister notified the applicant that there would be no revocation.
3. The applicant then applied to the second respondent **Tribunal** for a review of the decision made by the delegate. On 30 October 2023, the Tribunal published its decision not to revoke the cancellation of the applicant’s visa and its reasons for doing so: *PHTP and Minister for Immigration, Citizenship and Multicultural Affairs (Migration)* [2023] AATA 3536 (**T**).
4. The applicant then sought judicial review in this Court of the Tribunal’s decision, relying upon various grounds, including, relevantly, ground 4 in the following terms:

The Tribunal Decision was affected by jurisdictional error because it erred in law in finding that the legal consequence of a decision not to revoke the decision under review was that the Applicant would be detained indefinitely or for a lengthy period as it was contrary to the decision of the High Court in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37.

1. On 16 May 2024, the application for judicial review was heard. Subsequently, and following delivery of the decision of the Full Court of this Court in ***AJN23*** *v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] FCAFC 103 (Murphy, Stewart and McEvoy JJ), the parties requested that the Court defer the delivery of its decision until they had considered the effect of *AJN23*. On 30 September 2024, the parties provided proposed consent orders including an agreed notation to the Court, which if made would have the effect of quashing the Tribunal’s decision and requiring the Tribunal to re-determine the application before it.
2. I am satisfied that the Tribunal made a jurisdictional error and that the orders and notation sought should be made. It is appropriate, despite the orders being agreed between the parties, that I set out my reasons for making the orders: see, e.g., *Kovalev v Minister for Immigration & Multicultural Affairs* [1999] FCA 557; (1999) 100 FCR 323 at 327 [12] (French J, as his Honour then was); *VNPC v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCA 921; (2022) 181 ALD 49 at 50 ([3] to [6]) (Colvin J). I do so briefly below.
3. The Tribunal, in its decision, made a finding that the almost inevitable consequence of the cancellation of the applicant’s visa would be his indefinite detention (T[102]). That finding involved an error of law: see *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37; (2023) 97 ALJR 1005; *AJN23* at [33] and [34].
4. When regard is had to the Tribunal’s reasons as a whole, it is apparent that the error permeated those reasons (see, e.g., T[47], [60], [72], [108] and [110] to [112]); and I am satisfied that the error is material in the manner recently explained by the High Court of Australia in *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12; (2024) 98 ALJR 610 and by the Full Court of this Court in *AJN23* at [46], [49] to [51] and [54]. Thus the error is jurisdictional and the orders sought should be made.

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| I certify that the preceding eight (8) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Goodman. |

Associate:

Dated: 11 October 2024