[2014] AATA 846

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| Division | **GENERAL ADMINISTRATIVE DIVISION** |
| File Number(s) | 2013/6309 |
| Re |  |
|  | APPLICANT |
| And | Minister for Immigration and Border Protection |
|  | RESPONDENT |

# Decision

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| Tribunal | **Deputy President J W Constance** |
| Date | **11 November 2014** |
| Place | **Sydney** |

The Tribunal:

1. sets aside the decision of the delegate of the Minister dated 20 November 2013 refusing Mr Han’s application for Australian citizenship;
2. remits the matter to the Respondent for reconsideration in accordance with the direction that Mr Han satisfies the residence requirements of the *Australian Citizenship Act 2007* (Cth) for the grant of Australian citizenship.

............................**[sgd]**............................................

**Deputy President J W Constance**

Catchwords

CITIZENSHIP - citizenship by conferral – residence requirement – consideration of discretion in subsection 22(9) – whether an applicant’s spouse must also be an Australian citizen during the applicant’s periods of absence from Australia

CITIZENSHIP - citizenship by conferral – residence requirement – consideration of discretion in section 22(9) – close and continuing association with Australia

Legislation

Australian Citizenship Act 2007 (Cth) ss 21(2)(c), 22(1), 22(9)

Cases

*CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384

*Drake and Minister for Immigration and Ethnic Affairs (No 2)* (1979) 2 ALD 634

*Herrmann and Minister for Immigration and Border Protection* [2014] AATA 105

*Hingorani and Minister for Immigration and Citizenship* [2011] AATA 266

*Saeed and Minister for Immigration and Citizenship* (2010) 241 CLR 252

*Sapronov and Minister for Immigration and Citizenship* [2011] AATA 126

*Taher and Minister for Immigration and Border Protection* [2013] AATA 917

*Ul Haque and Minister for Immigration and Citizenship* [2013] AATA 118

*Young and Minister for Immigration and Citizenship* [2012] AATA 268

Secondary Materials

Australian Citizenship Bill 2005 (Cth) Explanatory Memorandum

Australian Citizenship Bill 2005 (Cth) Revised Explanatory Memorandum

Australian Citizenship Instructions (1 July 2014)

# REASONS FOR DECISION

**Deputy President J W Constance**

# introduction

1. Mr Han first arrived in Australia in January 2001. He has since travelled to and from Australia on a regular basis.
2. In September 2013, Mr Han applied for Australian citizenship by conferral. On 20 November 2013, a delegate of the Minister for Immigration and Border refused Mr Han’s application on the ground that he did not meet the residence requirements for a grant of citizenship.
3. Mr Han has applied to the Tribunal for a review of the delegate’s decision. For the reasons which follow, the decision under review will be set aside and the matter remitted to the Minister for reconsideration.

**BACKGROUND**

1. Mr Han was born in Vietnam in 1957. He first arrived in Australia in 2001 on a Business (short stay) visa (subclass 456). He subsequently travelled between Australia and Vietnam on a large number of occasions on subclass 456 visas.
2. A permanent visa was granted to Mr Han in April 2008. He arrived in Australia with his wife and daughter the following month. His wife and daughter were granted Australian citizenship on 13 June 2013.
3. During the four years prior to his application for citizenship, Mr Han had been present in Australia for 458 days.[[1]](#footnote-1) In the year immediately prior to his application, Mr Han was present for a period of 58 days.[[2]](#footnote-2) On this basis, the delegate of the Minister for Immigration and Border Protection determined that Mr Han did not meet the residence requirements for eligibility for the conferral of Australian citizenship and refused his application.

**LEGISLATION**

1. Section 21(2) of the *Australian Citizenship Act 2007* (Cth) establishes the criteria for general eligibility for the conferral of Australian citizenship. Importantly, subsection 21(2)(c) provides that a person is eligible if the Minister is satisfied that the person satisfies the general residence requirement set out in section 22.
2. Section 22(1) of the Act provides:

(1) Subject to this section, for the purposes of section 21 a person satisfies the **general residence requirement** if:

(a) the person was present in Australia for the period of 4 years immediately before the day the person made the application; and

(b) the person was not present in Australia as an unlawful non-citizen at any time during that 4 year period; and

(c) the person was present in Australia as a permanent resident for the period of 12 months immediately before the day the person made the application.

1. The Act provides the Minister with discretion to treat a period of absence from Australia as a period in which the person was present for the purposes of satisfying the general residence requirement. Section 22(9) provides:

(9) If the person is the spouse, de facto partner or surviving spouse or de facto partner of an Australian citizen at the time the person made the application, the Minister may treat a period as one in which the person was present in Australia as a permanent resident if:

(a) the person was a spouse or de facto partner of that Australian citizen during that period; and

(b) the person was not present in Australia during that period; and

(c) the person was a permanent resident during that period; and

(d) the Minister is satisfied that the person had a close and continuing association with Australia during that period.

**ISSUES FOR DETERMINATION**

1. Mr Han married Ms To on 5 November 1988[[3]](#footnote-3). They remain married to each other. Ms To became an Australian citizen on 13 June 2013[[4]](#footnote-4). On this basis it is not in dispute that Mr Han was the spouse of an Australian citizen on 11 September 2013, being the time he made his application for citizenship.
2. Mr Han concedes that he was not present in Australia during many periods in each of the four years prior to his application. The Minister agrees that Mr Han was a permanent resident during all of the periods under consideration and that Mr Han was not present in Australia as an unlawful non-citizen during any of those periods.
3. As Ms To became an Australian citizen after some of the periods of Mr Han’s absence from Australia, it is necessary to decide whether Mr Han satisfies the requirements of subsection 22(9)(a) in respect of those earlier periods of absence. This raises the issue of whether Mr Han is required to show that his spouse was an Australian citizen during each of the periods for which he claims the Minister should exercise his discretion.
4. Accepting that Mr Han was a permanent resident during his periods of absence from Australia, if Mr Han shows that he meets subsection 22(9)(a), the second issue will be whether Mr Han had *“a close and continuing association with Australia”* during those periods as required by subsection 22(9)(d).

# consideration

## ISSUE 1: Does subsection 22(9) require Mr Han to show that his spouse was an Australian citizen during each of his relevant periods of absence from Australia?

### The alternative interpretations

1. It is argued on behalf of Mr Han that the subsection requires that:
	* 1. his spouse was an Australian citizen at the time he made his application for citizenship; and
		2. that same person was his spouse during each particular period under consideration.
2. The argument on behalf of the Minister is that the subsection requires that:

(i) his spouse was an Australian citizen at the time he made his application for citizenship; and

* + 1. that same person was his spouse **and an Australian citizen** during each particular period under consideration.

### Previous decisions of the Tribunal

1. The Tribunal has varied in its interpretation of the subsection.
2. In *Sapronov and Minister for Immigration and Citizenship[[5]](#footnote-5)* the Tribunal adopted the interpretation for which Mr Han now contends. It said:

The opening sentence of s 22(9) of the Act simply states that the person must be a spouse or de facto spouse of an Australian citizen at the time the person made the application. It appears the Minister accepts this provision is met. Section 22(9)(a) requires the applicant (the person) to have been a spouse or de facto spouse of the Australian citizen during the residency period which is sought to be included by reason of the section. I can see nothing in that section of the Act which requires Ms Zheleznova to have been an Australian citizen throughout the four year period preceding the application. I cannot therefore accept Mr Bower’s submission that Mr Sapronov cannot satisfy s 22(9)(a) of the Act.

Mr Sapronov was the de facto spouse of Ms Zheleznova for some 15 years prior to lodging a citizenship application. When he lodged his application, Ms Zheleznova was an Australian citizen. Therefore, I find that Mr Sapronov satisfies the requirements in s 22(9)(a).

1. The same interpretation was relied upon by the Tribunal in *Young and Minister for Immigration and Citizenship.[[6]](#footnote-6)*
2. The Tribunal interpreted subsection 22(9) in the manner argued on behalf of the Minister in *Hingorani and Minister for Immigration and Citizenship.[[7]](#footnote-7)* The Tribunal said in that application:

I agree with the Minister’s submission that the discretion is only available in respect of periods spent outside Australia from the time when Mr Hingorani’s wife became an Australian citizen to the time Mr Hingorani lodged his application for citizenship. I respectively disagree with the decision of the Tribunal in Re Sapronov and Minister for Immigration and Citizenship [2011] AATA 126, to which Ms Stone drew my attention, which decided otherwise. I note the use of the words ‘that period’ in s 22(9)(a) referring back to the word ‘period’ in the first sentence of the subsection. Section 15AB(1) of the Acts Interpretation Act 1901 permits reference to extrinsic material to confirm the meaning of a provision of an Act or to determine the meaning of a provision where the provision is ambiguous or obscure or the ordinary meaning conveyed by the text leads to a result that is manifestly absurd or unreasonable. Such extrinsic material includes any explanatory memorandum relating to the Bill containing the provision laid before either House of the Parliament by a Minister before the time when the provision was enacted (s 15AB(2)(e)).

In the case of the Australian Citizenship Bill 2005, which was enacted on 15 March 2007 and became the Australian Citizenship Act 2007, the Revised Explanatory Memorandum for the Bill, which took into account amendments made by the House of Representatives and was circulated by authority of the Minister, stated with regard to the then clause 22(9) of the Bill:

This provision allows the Minister to treat periods spent overseas by an applicant as periods during which the person was present as a permanent resident in Australia. **The person must have been a permanent resident and the spouse of an Australian citizen during the period overseas** and satisfy the Minister that they had a close and continuing relationship with Australia during the period spent overseas. [My emphasis]

1. The Tribunal re-stated this position in *Herrmann and Minister for Immigration and Border Protection.[[8]](#footnote-8)*
2. In my opinion the interpretation for which Mr Han contends is correct and I must respectfully disagree with the Tribunal’s interpretation adopted in the *Higorani* *and Herrmann* decisions.

### The Minister’s argument

1. The general residence requirements are of central importance to eligibility for a grant of citizenship. These requirements are set out in subsection 22(1) followed by a number of subsections which qualify the application of those requirements.
2. The Act makes a distinction between an applicant’s presence in Australia during the period four years prior to the application and the period 12 months prior to the application being made. The presence must be lawful at all times but only during the 12 month period is the applicant required to be a permanent resident. Subsections 22(1A) and 22(1B) make specific provision as to what is required to show presence in Australia during the four year and 12 month periods respectively. These provisions anticipate the operation of subsection 22(9).
3. Relevantly to this application, the first proviso in subsection 22(9) is that the applicant be the spouse of an Australian citizen at the time of the application. The second proviso is contained in what Counsel described as the *“deeming provision”*, namely that *“the Minister may treat a period as one in which the person was present in Australia as a permanent resident”.* The terms of the second proviso are set out in sub-paragraphs (a) – (d) inclusive. Each refers back to the period nominated in the *chapeau* of the subsection.
4. The proper construction of subsection 22(9) is that it can be used to satisfy either or both the four year period referred to in subsection 22(1A) and the 12 month period referred to in subsection 22(1C). There is no reference to either of the two periods in subsection 22(9) but there is a reference to *“a period”* and that is the same period as is referred to in sub-paragraphs (a) – (d). Therefore *“the use of the word ‘Australian citizen’ in subparagraph (a) is a clear indication on the ordinary meaning of the words that the section is properly construed to require that the person must be married to a person who is an Australian citizen throughout the relevant period.” [[9]](#footnote-9)*
5. Counsel referred me to part of the Explanatory Memorandum as follows:

This new subsection amends the Act by requiring that spouses of Australian citizens meet the same criteria as other adult applicants for citizenship. This reflects current policy, and the modern expectation that adult applicants should qualify in their own right rather than relying on a spousal relationship with another person.

However, it is recognised that in some circumstances the spouse of an Australian citizen may have difficulty meeting the residence requirements, for example if they are accompanying their Australian citizen spouse overseas (for example, spouses of Australians working overseas for international organisations). As a result this subsection introduces a new discretion to waive part or all of the residence requirements for the spouse of an Australian citizen who can demonstrate a close and continuing association with Australia.[[10]](#footnote-10)

### Consideration

1. In *Saeed and Minister for Immigration and Citizenship[[11]](#footnote-11)*  the High Court of Australia said in part:

As Gummow J observed in Wik Peoples v Queensland, it is necessary to keep in mind that when it is said the legislative "intention" is to be ascertained, "what is involved is the 'intention manifested' by the legislation." Statements as to legislative intention made in explanatory memoranda or by Ministers, however clear or emphatic, cannot overcome the need to carefully consider the words of the statute to ascertain its meaning.

...

Resort to the extrinsic materials may be warranted to ascertain that context and that objective, although it is hardly necessary to do so. But that objective cannot be equated with the statutory intention as revealed by the terms of the subdivision.

1. I do not accept the argument that, because the same period is referred to throughout subsection 22(9), the use of the term *“Australian citizen”* means that the applicant for citizenship must be married to an Australian citizen during the whole of a period before that period can be treated as one in which the applicant was present in Australia.
2. The *chapeau* of the subsection refers only to the applicant’s spouse being an Australian citizen at the time the application is made. The use of the words *“Australian citizen”* in subparagraph (a)is necessary to distinguish the person who is the spouse of the applicant from the person who is the applicant. This is made clear by the subparagraph referring to “***that*** *Australian citizen”* [emphasis added]. These words, viewed in their ordinary meaning and in the context of the provision, are clearly intended to refer back to the person identified in the chapeau.
3. The interpretation proposed by the Minister effectively requires the subsection to be read as if the words *“and during the relevant period”* appeared after the words *“at the time the person made the application”.* Had Parliament intended that the subsection be interpreted in this way it could have said so by simply adding the words I have suggested.
4. Having carefully considered the words of the subsection, and in the absence of the words suggested above, I conclude that Parliament did not intend that the spouse of the applicant must be an Australian citizen during each of the periods under consideration. The intention *“manifested”* by the legislation is that the spouse of the applicant must be the same spouse at both the time of the application and during the relevant period but not that the spouse of the applicant also be an Australian citizen during the relevant period.
5. Resort to extrinsic materials to assist in this situation is neither necessary nor warranted. It may be appropriate to consider extrinsic material to determine the mischief which legislation is intended to remedy, however, this does not assist the Minister. In *CIC Insurance Ltd v Bankstown Football Club Ltd [[12]](#footnote-12)*  the High Court said[[13]](#footnote-13):

It is well settled that at common law, apart from any reliance upon s15AB of the Acts Interpretation Act 1901 (Cth), the court may have regard to reports of law reform bodies to ascertain the mischief which a statute is intended to cure(46). Moreover, the modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses "context" in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy.

1. I respectfully adopt the following reasoning of the Tribunal in *Sapronov* in this regard:

Using the extrinsic material I have referred to above to determine the mischief which was intended be remedied by the Act, it appears the mischief was that under the Old Act, spouses were able to seek the Minister’s discretion for the grant of Australian citizenship where they were simply a permanent resident and the spouse of an Australian citizen. As the Explanatory Memorandum states, the Act now requires those citizens to meet the same criteria as other adult applicants for citizenship. As for the discretion to waive all or part of the residence requirements for the spouse of an Australian citizen, as the Explanatory Memorandum states, those citizens only need to demonstrate a close and continuing association with Australia.

1. Counsel for the Minister directed me to the Revised Explanatory Memorandum, which was issued to take account of amendments made by the House of Representatives to the Bill as introduced. It contains the following explanation of subsection 22(9):

This provision allows the Minister to treat periods spent overseas by an applicant as periods during which the person was present as a permanent resident in Australia. The person must have been a permanent resident and the spouse of an Australian citizen during the period overseas and satisfy the Minister that they had a close and continuing relationship with Australia during the period spent overseas.

1. This Explanatory Memorandum clearly supports the interpretation proposed by the Minister. However, I repeat what was said by the High Court in *Saeed and Minister for Immigration and Citizenship* that *“[s]tatements as to legislative intention made in explanatory memoranda or by Ministers, however clear or emphatic, cannot overcome the need to carefully consider the words of the statute to ascertain its meaning”*.[[14]](#footnote-14)
2. The *Australian Citizenship Instructions* are also consistent with the interpretation adopted by the Minister. The Tribunal must apply lawful government policy unless there are cogent reasons to the contrary.[[15]](#footnote-15) However, in circumstances such as this, where the policy purports to fetter the discretion conferred by statute, its application is not permissible.
3. For the reasons given above, an Applicant’s spouse need not be an Australian citizen during each period of the Applicant’s absence from Australia in order for the Minister to exercise the discretion in section 22(9). As Mr Han was married to Ms To throughout each of his periods of absence, I find that Mr Han satisfies subsection 22(9)(a).

## ISSUE 2: Did Mr Han have a *“close and continuing association with Australia”* during the periods of absence from Australia during the period of four years immediately prior to making his application for citizenship?

1. In applying subparagraph 22(9)(d) it is necessary to consider the ordinary meaning of the words used. The following definitions are taken from the *Australian Oxford Dictionary:*
	1. *“close”* means *“having a strong or immediate relation or connection”;*
	2. *“continuing”* means *“to remain in existence or unchanged”* and
	3. *“association”* means *“the act or an instance of associating; fellowship or companionship”.*

## *Australian Citizenship Instructions*

1. The qualification I have expressed above as to the application of the *Australian Citizenship Instructions* does not apply to the determination of Mr Han’s eligibility under subsection 22(9)(d). There is no reason why I should not apply the Instructions in this instance.
2. In relation to the exercise of the discretion under subsection 22(9) the Instructions relevantly provide:

In all cases, applicants must provide evidence that they maintained close and continuing association with Australia while overseas. Factors that may demonstrate this close and continuing association with Australia include but are not limited to:

* *evidence that the person migrated to and established a home in Australia prior to the period overseas*
* *Australian citizen children*
* *long term relationship with Australian citizen spouse or de facto partner*
* *extended family in Australia*
* *regular return visits to Australia*
* *regular periods of residence in Australia*
* *intention to reside in Australia*
* *the person has been on leave from employment in Australia while accompanying their spouse or partner overseas*
* *ownership of property in Australia*
* *evidence of income tax paid in Australia over the past four year and*
* *evidence of active participation in Australian community based activities or organisations.*

In assessing whether a person has a close and continuing association with Australia for the purposes of s22(9)(d), it is policy that more weight should be given to the above factors if the person has been lawfully and physically present in Australia for at least 365 days in the 4 years immediately before making an application for Australian citizenship (including at least 90 days as a permanent resident). Less weight should be given to these factors if they have not been present in Australia for at least this period.

## *Facts*

### Family relationships

1. Mr Han is 57 years old. He married Ms To in 1988; the marriage is continuing. There are two children of the marriage, a son aged 19 years and a daughter aged 17 years.
2. Mr Han’s wife and daughter became Australian citizens in June 2013 and reside in Australia. His daughter attends school in Australia and is substantially dependent upon Mr Han. Mr Han’s son lives with him in Vietnam.

### Assets in Australia

1. Since 2008 Mr Han has transferred approximately $4,500,000 to Australia to assist himself and his family settle in Australia. These funds have been used to buy real estate and motor vehicles, and to meet education costs and living expenses.
2. When the family migrated to Australia in 2008 Mr Han and Ms To purchased a residential property in Sydney. This property was sold in 2011. Since then they have purchased two other residential properties in Sydney, one of which is the family home.
3. Mr Han has a personal bank account in Australia which he uses when living here.

## *Payment of income tax*

1. In the financial years 2009 to 2012 inclusive, Mr Han earned significant income in Australia and paid income tax. Mr Han continues to earn an income in Australia and to pay tax. I do not have evidence as to the amounts of tax paid in the last two financial years.

### Business activities

1. Mr Han and his wife are the directors and major shareholders of an Australian company which purchases paper for recycling and exports the product to another company in Vietnam. Mr Han is the chairman and major shareholder of the Vietnamese company.
2. Mr Han manages the operations of the Australian company on a day to day basis and travels to Australia regularly as part of this process. His work in Australia includes meeting suppliers, representatives of logistics companies and accountants , negotiating pricing and checking stock. With the assistance of Ms To he also manages the company’s business electronically from Vietnam.
3. The company managed by Mr Han in Vietnam is a major player in the paper and pulp industry in that country. From time to time Mr Han has engaged Australian institutions and companies to assist in research and development on behalf of the Vietnamese company.
4. Mr Han has been negotiating to sell the majority of his shares in the Vietnamese company, although he acknowledges that if a sale is achieved he will need to remain in Vietnam for a long time to hand over the business. He has engaged an agent to negotiate the sale on his behalf. He plans to eventually reside with his family in Australia.

### Involvement in Australian Community

1. In 2011 Mr Han was involved in the establishment of a non-profit organization to promote the teaching of Buddhism in New South Wales. The organization has been involved in fundraising for charitable causes. Its operations are temporarily suspended while Mr Han recruits a new Monk to lead the organization.

### Consideration

1. In determining whether Mr Han had a close and continuing association with Australia during the relevant periods, it is important to take a holistic view. The Minister accepts that, in Mr Han’s case, the issue of his connection to Australia can be determined consistently across the relevant periods of absence.
2. As stated by the Tribunal in *Taher and Minister for Immigration and Border Protection[[16]](#footnote-16)*:

In my opinion, the factors referred to above should not be treated in isolation or simply ticked off individually as having been satisfied. It is the combination and association of these factors which may demonstrate a close and continuing association with Australia. On their own, factors such as having Australian citizen children and long-term relationships with an Australian citizen spouse or extended family in Australia may simply indicate a close and continuing association with family. That should not, in every case, be equated with a close and continuing association with Australia. As I have already indicated above, and as is stated in the preamble to the Citizenship Act, citizenship is about the membership of a community with common interests and involving reciprocal rights and obligations. Involvement with the Australian community may be demonstrated by many factors, some of which are listed above. It is plainly difficult to be involved with the Australian community if the person claiming so has not been physically present in Australia for significant periods of time. Hence, the paramount importance given to meeting the general residence requirements before a person becomes eligible for citizenship.

1. I am satisfied that Mr Han was present in Australia for more than 365 days in the four years immediately before he made his application (including all of that time as a permanent resident) and therefore more weight can be given to the factors referred to in the *Australian Citizenship Instructions*.
2. Mr Han has a home in Australia as well as in Vietnam. His wife and daughter are Australian citizens and live in Australia on a permanent basis. His marriage to Ms To has been long term and is continuing.
3. I note, as stated by the Tribunal in *Ul Haque and Minister for Immigration and Citizenship* that “*although there may be some overlap, having a close and continuing relationship with his family is not the same thing as having a close and continuing relationship with Australia*”.[[17]](#footnote-17) I have also taken into consideration that Mr Han has been absent from Australia during substantial periods in the four years before his application and in the immediately preceding 12 months. However, I am satisfied that his contact with his family and his business operations have kept him in close contact with Australia during his absences and that he does intend to reside permanently in Australia, albeit at an indeterminate time.
4. Furthermore, although Mr Han’s company in Australia is tied to his business interests in Vietnam and has operated at limited profit, the company has established strong ties with other Australian businesses. It also reflects a sustained effort by Mr Han to conduct a viable commercial enterprise within Australia.
5. Viewed as a whole, Mr Han’s connection to his family in Australia, his business interests, community involvement, as well as his substantial financial investment in Australia and payment of income tax indicate that he held a close and continuing association with Australia during the relevant periods of his absence from Australia.

# conclusion

1. I find that Mr Han satisfies the prerequisites for the exercise of the discretion in subsection 22(9) and I am satisfied that the discretion should be exercised in his favour. It was not argued on behalf of the Minister that there is reason to refuse to exercise the discretion.
2. In accordance with subsection 22(9), I find that the periods in which Mr Han was absent from Australia in the four years prior to his application for citizenship should be treated as time in which he was present in Australia as a permanent resident.
3. Accordingly, I find that Mr Han satisfies the general residence requirement contained in subsection 22(1). He therefore satisfies the general residence requirements of eligibility for the grant of citizenship contained in subsection 21(2)(c) of the *Australian Citizenship Act 2007 (Cth)*.
4. For the reasons given, the decision of the Delegate of the Minister made 20 November 2013 refusing Mr Han’s application for citizenship will be set aside.
5. The matter will be remitted for reconsideration in accordance with the direction that Mr Han satisfies the residence requirements of the *Australian Citizenship Act 2007* (Cth) for the grant of Australian citizenship.

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| I certify that the preceding 63 (sixty-three) paragraphs are a true copy of the reasons for the decision herein of Deputy President J W Constance |

............................**[sgd]**............................................

Associate

Dated 11 November 2014

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| --- | --- |
| Date(s) of hearing | **11 September 2014** |
| Date final submissions received | **11 September 2014** |
| Counsel for the Applicant | **L J Karp** |
| Solicitors for the Applicant | **Vinh Duong and Associates** |
| Counsel for the Respondent | **J Smith** |
| Solicitors for the Respondent | **DLA Piper Australia** |

1. Respondent’s Statement of Facts, Issues and Contentions p.2. [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)
3. Exhibit R1 p.139. [↑](#footnote-ref-3)
4. Exhibit R1 p.144. [↑](#footnote-ref-4)
5. [2011] AATA 126 at paras 36-38. [↑](#footnote-ref-5)
6. [2012] AATA 268. [↑](#footnote-ref-6)
7. [2011] AATA 266 at paras 13-14. [↑](#footnote-ref-7)
8. [2014] AATA 105. [↑](#footnote-ref-8)
9. Transcript 11/09/14 p-9. [↑](#footnote-ref-9)
10. Australian Citizenship Bill 2005 (Cth) Explanatory Memorandum [↑](#footnote-ref-10)
11. (2010) 241 CLR 252, 264-265. [↑](#footnote-ref-11)
12. (1997) 187 CLR 384. [↑](#footnote-ref-12)
13. At p.408. [↑](#footnote-ref-13)
14. (2010) 241 CLR 252, 264-265. [↑](#footnote-ref-14)
15. Re Drake and Minister for Immigration and Multicultural and Ethnic Affairs (No.2) (1979) 2 ALD 634 at 645. [↑](#footnote-ref-15)
16. [2013] AATA 917, at [47]. [↑](#footnote-ref-16)
17. [2013] AATA 118, at [52]. [↑](#footnote-ref-17)