[2015] AATA 536

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| Division | **GENERAL DIVISION** |
| File Number(s) | 2015/2514 |
| Re | Confidential |
|  | APPLICANT |
| And |  |
|  | RESPONDENT |

# Decision

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| Tribunal | **Ms G Ettinger, Senior Member** |
| Date | **30 June 2015** |
| Date of written reasons | **22 July 2015** |
| Place | **Sydney** |

The Tribunal refused the application for extension of time.

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**Ms G Ettinger, Senior Member**

# Catchwords

Extension of time application – well established principles from well known cases applied – extension of time refused.

# Legislation

Administrative Appeals Tribunal Act 1975 s 29(7)

Australian Citizenship Act 2007 s24(6)

# Cases

Hunter Valley Developments Pty Ltd v Cohen, Minister for Home Affairs and Environment [1984] FCA 176, (1984) 3 FCR 344

# REASONS FOR DECISION

**Ms G Ettinger, Senior Member**

**22 July 2015**

1. The Tribunal has powers under section 29 subsection (7) of the *Administrative Appeals Tribunal Act* to extend time for an applicant to apply to the Tribunal for review of a decision, in this case the decision of the Minister for Immigration and Border Protection, if it is satisfied that it is reasonable in all the circumstances to do so. Now, I have already mentioned there is a case that is called *Hunter Valley Developments v Cohen, Minister for Home Affairs and Environment* [1984] FCA 176 and it is a case that sets out the principles that we need to look at, and they are amongst the things that we have canvassed today.
2. Prima face 28 days, which is the statutory period for appeal, cannot be ignored. However, there is some discretion, and we look at whether you rested on your rights. Now, you have come to make this application over four and a half years after the decision was given and mailed to you at what appears to have been, and you have acknowledged, the correct address at which you were in Sydney at the time.
3. The reasons you have given for the delay in applying between when the decision was made in September 2010 and April 2015 are not very convincing, and I am not satisfied. First of all, you have denied receiving the decision. You have not made any application to ask what the decision of the Minister was at the time until you came back to Australia again in 2011. You tell me that you went along to an office of the Department, and that you asked for the result of the decision of the Minister, but that you did not ask for a copy of the decision, and it was not offered to you.
4. I find that hard to believe. The records indicate it was sent to you by registered post, and you have known since you were here in 2011 that the decision was refused. You are a highly educated person, a chartered accountant. It is likely that you could have applied for a review, at least questioned, (whether you were in the country or not), after you found out in 2011 that your application was refused, how to appeal that decision. You did not do that.
5. I accept that you had some personal dramas, and some serious dramas; you had a marriage break-up; your mother is sick, and your father died. They are all major events in your life, but it seems to me that between 2011, which is when you admit you found out about the decision of the Department, and 2015, you rested on your rights. I do not think that your reasons for delay are acceptable.
6. We next look at prejudice to the Department. There would probably be no prejudice to the Department if you were granted an extension because they have all your documents, and they could follow-up. The fact that there is no prejudice does not necessarily mean however, that we think it is reasonable to allow the extension of time.
7. Now to the merits of the case. As Ms Dejean has pointed out, the decision was correctly refused under section 24(6) of the *Australian Citizenship Act 2007* (the Act) because at the time there were court proceedings pending, and you know about those. The decision of the Magistrate was made in August 2011, and you were given a one year bond. A reasonable time always needs to follow after that, and, in fact, under section 24(6) of the Act, there is no discretion. The Minister must not allow citizenship to be conferred if there is court pending, and that was so in your case.
8. As far as fairness between you and other applicants; I think there are strong policy reasons for not allowing the extension of time. It is a way that you could sidestep the residency requirements if you were allowed to proceed with your application for review now. What you have to do is wait the requisite period under the Act, and it is spelt out quite clearly, get some legal advice, and when the time comes, if there have not been any further convictions or any further criminal charges, then, given your background, it is possible that citizenship will be granted to you.
9. Meanwhile, you have the benefits of permanent residence. You can get advice about whether you can leave if you have to have to go on business and come back again. We do not give legal advice here, we cannot do that, but you can get advice about that. So, unfortunately, for all those reasons, the application to extend time for review is refused, and we will send you a formal confirmation of that. Thank you.

**DECISION**

1. The Tribunal refused the extension of time.

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| I certify that the preceding 10 (ten) paragraphs are a true copy of the reasons for the decision herein of Ms G Ettinger, Senior Member |

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Associate

Dated 22 July 2015

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| Date(s) of hearing | **30 June 2015** |
| Applicant | **In person** |
| Solicitor for the Respondent | **Ms Dejean, Australian Government Solicitor** |