HIGH COURT OF AUSTRALIA

6 May 2015

UELESE v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR

[2015] HCA 15

Today the High Court unanimously allowed an appeal from a decision of the Full Court of the Federal Court of Australia. The High Court held that the Administrative Appeals Tribunal ("the Tribunal") erred in its application of s 500(6H) of the *Migration Act* 1958 (Cth) ("the Act") by failing to consider information adduced during the cross-examination of a witness.

The appellant is a Samoan-born citizen of New Zealand, who has been living in Australia since 1998 on a visa tied to his New Zealand citizenship. The appellant has a "substantial criminal record" for the purposes of s 501(7)(c) of the Act. In 2012, on the basis of that criminal record, a delegate of the Minister made a decision under s 501(2) of the Act to cancel the appellant's visa.

The appellant applied to the Tribunal for review of the delegate's decision. Under a ministerial direction made pursuant to s 499 of the Act, the Tribunal was obliged to consider the best interests of any minor children in Australia affected by the cancellation of the appellant's visa. The appellant made submissions about the best interests of three of his children. In the course of the hearing, during cross-examination of the appellant's partner, it emerged that the appellant has an additional two younger children from a different relationship.

Section 500(6H) of the Act provides that, in matters of this kind, the Tribunal must not have regard to any information presented orally in support of a person's case unless it has been provided in a written statement to the Minister at least two days before the Tribunal holds a hearing. The Tribunal regarded s 500(6H) as precluding consideration by it of the position of the appellant's two youngest children and affirmed the delegate's decision to cancel the appellant's visa. The appellant applied to the Federal Court for judicial review of the Tribunal's decision. That application was dismissed. The appellant appealed from that decision to the Full Court of the Federal Court. That appeal was also dismissed. By special leave, the appellants appealed to the High Court.

The High Court unanimously allowed the appeal, holding that s 500(6H) does not preclude the Tribunal from considering information which is not presented by or on behalf of an applicant for review as part of his or her case. The Court held that by applying s 500(6H) in the way that it did, the Tribunal had truncated the review that it was required to undertake. The Court also held that s 500(6H) does not fetter the power of the Tribunal to grant an adjournment to enable the applicant to give the required notice to the Minister, where this is necessary to ensure that a review is conducted thoroughly and fairly.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

Please direct enquiries to Ben Wickham, Senior Executive Deputy Registrar
Telephone: (02) 6270 6893
Email: b.wickham@hcourt.gov.au Website: www.hcourt.gov.au