



HIGH COURT OF AUSTRALIA

8 March 2017

MINISTER FOR IMMIGRATION AND BORDER PROTECTION v KUMAR & ORS

[2017] HCA 11

Today the High Court, by majority, allowed an appeal from a decision of the Federal Court of Australia. The High Court held that the Federal Court erred in holding that s 36(2) of the *Acts Interpretation Act* 1901 (Cth) ("the AIA") operated to allow the first respondent's application for a Subclass 572 (Vocational Education and Training Sector) visa ("572 visa") to be assessed as if it had been made before the expiry of his Subclass 485 (Temporary Graduate) visa ("485 visa").

The first respondent applied for a 572 visa. The application was received at an office of the Department of Immigration and Border Protection on Monday 13 January 2014. Clause 572.211 of Schedule 2 to the Migration Regulations 1994 (Cth) specified criteria that had to be satisfied at the time of the making of an application for a 572 visa. The first respondent would have met those criteria if he held a valid 485 visa at the time of the making of his application for a 572 visa. The first respondent's 485 visa had expired on Sunday 12 January 2014.

In May 2014, a delegate of the Minister for Immigration and Border Protection refused to grant the 572 visa because, at the date the application was made, the first respondent did not meet the criteria in cl 572.211 in that, as of Monday 13 January 2014, he was not the holder of a 485 visa. The Migration Review Tribunal affirmed that decision, agreeing that the first respondent did not satisfy the criteria in cl 572.211.

The first respondent sought judicial review in the Federal Circuit Court of Australia, arguing that s 36(2) of the AIA operated so that the first respondent continued to meet the requirements of cl 572.211 on Monday 13 January 2014. Section 36(2) provides that if an Act "requires or allows a thing to be done" and "the last day" for the doing of the thing is a Saturday, Sunday or holiday, then the thing may be done on the next day that is not a Saturday, Sunday or holiday. The Federal Circuit Court, in dismissing the application, held that, because cl 572.211(2) identified a state of affairs that must exist as a criterion for the making of an application, rather than prescribed or allowed a thing to be done, s 36(2) of the AIA had no operation. On appeal, the Federal Court of Australia quashed that decision. The Federal Court held that, because the last day for the first respondent to apply for the 572 visa was, as a matter of fact, Sunday 12 January 2014, s 36(2) operated to allow the application to be made on Monday 13 January 2014.

By grant of special leave, the Minister appealed to the High Court. The Court held, by majority, that s 36(2) of the AIA, properly construed, was not engaged. This was because no time limit is imposed expressly, or by implication, under the *Migration Act* 1958 (Cth) and the Migration Regulations on the making of an application for a 572 visa. Section 36(2) could not deem a thing to be done as if it were done on the earlier date, nor could it deem a state of affairs that existed on the earlier date to exist on the later date. As the first respondent did not meet the criteria for the grant of the 572 visa at the date of his application, the Court made orders effecting a reinstatement of the orders of the Federal Circuit Court.

- *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.*