



HIGH COURT OF AUSTRALIA

17 August 2022

TU'UTA KATOA v MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES
AND MULTICULTURAL AFFAIRS & ANOR
[2022] HCA 28.

Today, the High Court unanimously dismissed an application, brought in the Court's original jurisdiction, seeking writs to quash, and require the remaking of, the Federal Court of Australia's decision to refuse an extension of time for the plaintiff to seek judicial review of a ministerial decision to cancel the plaintiff's visa.

The plaintiff, a citizen of New Zealand, held a Class TY Subclass 444 Special Category (Temporary) visa. That visa was cancelled by the then Minister for Home Affairs pursuant to s 501(3)(b) of the *Migration Act 1958* (Cth) ("the Act") on the basis that the Minister reasonably suspected that the plaintiff did not pass the character test and was satisfied that the cancellation of the visa was in the national interest. The plaintiff did not apply to the Federal Court of Australia for review of that decision within the time allowed by s 477A(1) of the Act. The plaintiff later applied to the Federal Court pursuant to s 477A(2) of the Act for an extension of time in which to file an application for review of the Minister's decision. Under s 477A(2), an extension could only be granted if the Federal Court was satisfied that an extension was necessary in the interests of the administration of justice. The primary judge heard the application for an extension of time concurrently with the underlying substantive application for judicial review. The primary judge dismissed the extension of time application after failing to be persuaded that the single ground of review in the proposed substantive application had any merit. Subsections 476A(3)(b) and (4) of the Act had the effect that the plaintiff was not able to bring an appeal from the decision of the primary judge to refuse to grant an extension of time.

In the High Court, the plaintiff contended that the primary judge's decision involved jurisdictional error because the judge misapprehended or misconceived the nature and purpose of the statutory power in s 477A(2) to extend time. The plaintiff argued that this error was revealed by the primary judge's reasons, which were said to extend beyond an assessment of the merits of the application for review on an "impressionistic" basis for the limited purpose of assessing whether the application was reasonably arguable.

In dismissing the application, the High Court accepted that, in determining what is necessary in the interests of the administration of justice for the purposes of s 477A(2), it will often be appropriate to assess the merits of the proposed grounds of review at a "reasonably impressionistic level". However, there will also be circumstances in which it is appropriate for the Federal Court to engage in more than an impressionistic assessment of the merits. As the merits of a proposed application are a consideration permitted by the terms of s 477A(2), it is within the Federal Court's jurisdiction to have regard to that factor in such manner as it considers appropriate in the circumstances. It was permissible, and in this case appropriate, for the primary judge to assess whether the proposed ground of appeal had any merit in order to decide the extension of time application.

- *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.*