



HIGH COURT OF AUSTRALIA

14 June 2023

ENT19 v MINISTER FOR HOME AFFAIRS & ANOR
[2023] HCA 18

Today, the High Court, in its original jurisdiction under s 75(v) of the *Constitution*, held by majority that the purported decision made personally by the Minister for Home Affairs, the first defendant, under s 65 of the *Migration Act 1958* (Cth) to refuse the plaintiff's application for a temporary protection visa – a Safe Haven Enterprise (Class XE) Subclass 790 visa (a "SHEV") – was invalid. The Court issued a writ of certiorari quashing the Minister's decision and a writ of mandamus commanding the Minister to determine the plaintiff's visa application according to law within 14 days.

The plaintiff, a citizen of Iran, arrived in Australia by boat in December 2013 and was immediately detained under s 189 of the Act. In February 2017, the plaintiff made a valid application for a SHEV. In October 2017, the plaintiff was convicted after pleading guilty to the aggravated offence of people smuggling, contrary to s 233C of the Act. In June 2022, the Minister refused the plaintiff's application because she was not satisfied of the visa criterion in cl 790.227 of Sch 2 of the *Migration Regulations 1994* (Cth) that the grant of the SHEV was in the national interest ("the Decision").

The Minister's reasons revealed that the criterion in cl 790.227 was not met because in her view it was not in the national interest to grant a protection visa to a person convicted of a people smuggling offence. Non-satisfaction of cl 790.227 was the sole basis for refusing the plaintiff's application. The Minister accepted that Australia owes protection obligations to the plaintiff because he is a refugee and that all other criteria for the grant of the SHEV were satisfied.

The plaintiff sought judicial review of the Decision, seeking various remedies on different grounds, including writs of habeas corpus, mandamus and certiorari, and declarations relating to the validity and construction of cl 790.227. The Court, by majority, held that on the proper construction and application of cl 790.227, the Decision was invalid. Construed in light of its function and context, cl 790.227 did not operate to permit the Minister or their delegate to reconsider or revisit, under the criterion of "national interest", matters that had already been considered as part of the decision-making process under s 65 and to treat those matters as sufficient to form the opinion that the Minister or delegate was not satisfied that the grant of the visa was in the national interest. The matter of the plaintiff's people smuggling conviction bore directly on the consideration of the visa criterion Public Interest Criterion 4001, which the Minister accepted had been satisfied, and the Minister's discretionary visa refusal powers in s 501, which the Minister had decided not to exercise. The Minister could not treat that matter alone as sufficient to conclude that the grant of the visa was not in the national interest under cl 790.227.

- *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.*