



## HIGH COURT OF AUSTRALIA

10 April 2024

LPDT v MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND  
MULTICULTURAL AFFAIRS & ANOR  
[2024] HCA 12

Today, the High Court unanimously allowed an appeal from the Full Court of the Federal Court of Australia concerning jurisdictional error and the requirement of materiality. Differences of expression and emphasis previously adopted by individual Justices about these issues have been put aside in favour of the guidance set out in the reasons for judgment in the appeal, with which all the Court agree.

The appellant, a Vietnamese national who arrived in Australia in 1997, held a Class BS Subclass 801 (Spouse) visa. Between 2011 and 2017, he was convicted of various offences and sentenced to several periods of imprisonment, including for a period of four years and six months. As a result, in 2019, the appellant's visa was subject to mandatory cancellation under s 501(3A) of the *Migration Act 1958* (Cth). A delegate of the Minister subsequently refused an application by the appellant for revocation of the cancellation under s 501CA(4) of the Act ("the delegate's decision"). The appellant applied to the Administrative Appeals Tribunal ("the Tribunal") to review the delegate's decision. The Tribunal, in considering under s 501CA(4) of the Act whether there was "another reason" why the cancellation should be revoked, was required to comply with a direction given by the Minister under s 499 of the Act ("Direction 90"). Direction 90 required the Tribunal to engage in an evaluative assessment involving the weighing of relevant mandatory considerations. Having engaged in that assessment, the Tribunal ultimately decided that it was not satisfied that there was "another reason" why the cancellation should be revoked and affirmed the delegate's decision.

The primary judge in the Federal Court of Australia dismissed the appellant's application for judicial review of the Tribunal's decision on the basis that the Tribunal had not erred in its treatment of relevant matters (set out in para 8.1.1(1)(a), (b) and (g) of Direction 90) to which it was required to have regard in assessing one of the mandatory considerations under Direction 90. On appeal, the Full Court of the Federal Court found that the Tribunal's findings in relation to those sub-paragraphs did involve error, but dismissed the appeal on the basis that the error was not material and therefore not jurisdictional. Before the High Court there was no dispute that the Tribunal's decision involved error – namely, a failure to comply with Direction 90 as a condition governing the making of its decision under s 501CA(4). The issue was whether the error was material so as to constitute jurisdictional error.

The High Court held that the Tribunal's error was material. The decision that was in fact made by the Tribunal could realistically have been different had there been no error. In determining whether the threshold of materiality had been met, it was sufficient, in this case, to have regard to the face of the Tribunal's reasons, which revealed that the error contributed to the evaluative and discretionary decision which the Tribunal made in exercising the statutory power under s 501CA(4). It was not for the Court to make assumptions or speculate about how the Tribunal would have undertaken the weighing exercise of the matters in para 8.1.1(1) had the error not been made. Further, none of the facts before the Court provided a basis to consider that the outcome would inevitably have been the same had the error not been made. The Tribunal's decision was therefore attended by jurisdictional error and void.

*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.*