HIGH COURT OF AUSTRALIA

6 March 2024

LESIANAWAI v MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS
[2024] HCA 6

Today, the High Court held that a decision by a delegate of the Minister for Immigration, Citizenship and Multicultural Affairs to cancel the plaintiff's visa was affected by jurisdictional error and should be quashed because the delegate had erroneously considered offences for which the plaintiff was sentenced when he was under 16 years old.

The plaintiff, a citizen of Fiji, first arrived in Australia in 1988 at the age of four and was granted a visa to remain permanently in 1999. Between 1996 and 2001, the plaintiff either pleaded guilty to, or was found guilty by the Children's Court of New South Wales of, numerous offences including robbery in company ("the youth offences"). In 2003 and 2010, he was convicted of and sentenced to terms of imprisonment by the District Court of New South Wales for further robbery offences. In 2013, the delegate cancelled the plaintiff's visa under s 501(2) of the *Migration Act 1958* (Cth) ("the delegate's decision"). The delegate had been provided with an issues paper which addressed the plaintiff's circumstances and attached a "National Police Certificate". The certificate described the plaintiff as having been "convicted" of the youth offences. The delegate's reasons noted that he took into account the plaintiff's convictions, including his "convictions" for offences for which he was sentenced by the Children's Court when he was under the age of 16 years.

The plaintiff commenced proceedings in this Court's original jurisdiction seeking certiorari to quash the delegate's decision. The plaintiff relevantly alleged that, by having regard to the youth offences, the delegate took into account material that he was precluded from considering by ss 85ZR and 85ZS of the *Crimes Act 1914* (Cth). Section 85ZR(2)(b) relevantly provides that where, under a State law, a person is "in particular circumstances or for a particular purpose, to be taken never to have been convicted of an offence", they shall be taken "in corresponding circumstances or for a corresponding purpose, by any Commonwealth authority" never to have been convicted of that offence. At the time of the youth offences, s 14(1)(a) of the *Children (Criminal Proceedings) Act 1987* (NSW) prohibited the Children's Court from proceeding to, or recording, any conviction if the child was under 16 years of age. The plaintiff contended that by operation of s 14(1)(a), he was taken never to have been convicted of the youth offences. Relying on ss 85ZR and 85ZS of the *Crimes Act* and the decision in *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Thornton* (2023) 97 ALJR 488; 409 ALR 234, the plaintiff argued the delegate was precluded from taking into account the youth offences.

The Court held that s 14(1)(a) of the State law, in its terms and effect, was sufficient to engage s 85ZR(2) of the *Crimes Act*: the plaintiff was to be taken as never having been convicted of the offences dealt with by the Children's Court. The delegate was precluded by ss 85ZR and 85SZ of the *Crimes Act* from considering the youth offences. As it was conceded by the Minister that the consideration of those offences was material to the delegate's decision, the decision was affected by jurisdictional error and a writ of certiorari quashing the decision was issued.

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.

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