



**CQZ15 v Minister for Immigration and
Border Protection**

FIRST RESPONDENT'S OUTLINE OF ORAL ARGUMENT

1. This outline is in a form suitable for publication on the internet.
2. The Amended Application before the Federal Circuit Court included allegations that the Tribunal had 'proceeded on' an invalid certificate, and had denied procedural fairness by not disclosing the existence of that certificate and a further notification under s 438 (CAB 31-32). The affidavit sought to be relied on by the Minister exhibited those documents and the documents said to be subject to them (CAB 73 [30]).
3. As to 'proceeding on' an invalid certificate, the appellant seemingly does not submit that that, in itself, constitutes jurisdictional error (Reply [32]). But the issue was alive before the Circuit Court (CAB 52-54). The material exhibited to the affidavit was at least potentially relevant in that it could have supported inferences about whether the Tribunal had relied on the certificate in any way (WS [27]-[29]).
4. As to a denial of procedural fairness (and assuming principles of procedural fairness required disclosure of the certificates and a chance to make submissions about it), the material exhibited to the certificate was at least potentially relevant in that it could have supported findings as to:
 - i. whether the Tribunal had made any decision adverse to the appellant's interests in reliance on the certificates (WS [36]);
 - *Re Minister for Immigration; ex parte Aala*, tab 19, at [104]
 - ii. whether the appellant had been denied the possibility of a successful outcome by anything done in connection with the certificates (WS [33]-[36]);
 - *Minister for Immigration v WZARH*, tab 13, at [56], [60]

- *Hossain v Minister for Immigration*, tab 8, at [30]-[31], [72].
- iii. (alternatively to (ii)), whether there was a reason to refuse relief on discretionary grounds (WS [38]-[41]).
- *Hossain v Minister for Immigration*, tab 8, at [74]
 - *Pasini v Mexico*, tab 16, at [12]-[18]
5. The Circuit Court, therefore, erred by declining to receive the affidavit (CAB 46 [29]). The Full Court was correct to set aside the final judgment of the Circuit Court and remit the matter to it.

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Bora Kaplan

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