HIGH COURT OF AUSTRALIA

11 February 2015

PLAINTIFF S297/2013 v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR

[2015] HCA 3

Today the High Court unanimously held that a decision made by the Minister for Immigration and Border Protection in July 2014 to refuse to grant the plaintiff a permanent protection visa was not made according to law and that the plaintiff was entitled to have that visa granted.

The plaintiff, a Pakistani national, entered Australia by sea at Christmas Island in May 2012. He did not have a visa and was, therefore, an "unlawful non-citizen" within the meaning of the *Migration Act* 1958 (Cth). By later amendments to the Act he became an "unauthorised maritime arrival". In September 2012, the Minister permitted the plaintiff to make a valid application for a permanent protection visa. The plaintiff made an application for a protection visa which was refused by a delegate of the Minister. The plaintiff sought review of that decision by the Refugee Review Tribunal. The Tribunal remitted the plaintiff's application to the Minister for reconsideration because the plaintiff was found to be a refugee. The Minister did not decide the plaintiff's application. The plaintiff initiated proceedings in the High Court claiming that various regulatory and other steps which were thought to permit the Minister not to decide the plaintiff's application were invalid or ineffective. In June 2014, the High Court held in favour of the plaintiff and ordered that the Minister consider and determine the plaintiff's application for a permanent protection visa according to law.

In July 2014, the Minister decided to refuse to grant the plaintiff a protection visa. The only reason for the refusal was that the Minister was not satisfied that the grant of a protection visa to the plaintiff "is in the national interest" because he was an unauthorised maritime arrival. The plaintiff challenged the validity of the "national interest" criterion on which the Minister relied and asked for orders directing the Minister to grant the plaintiff a permanent protection visa. The plaintiff also alleged that amendments made to the Act in late 2014 did not affect his right to a grant of that visa.

The High Court unanimously found that the decision made by the Minister to refuse to grant the plaintiff a protection visa was not made according to law. The Court found that the *Migration Act* 1958 (Cth) stated exhaustively what visa consequences attached to being an unauthorised maritime arrival, and the Minister could not refuse an application for a visa only because the applicant was an unauthorised maritime arrival. The Court also held that the amendments to the Act did not affect the plaintiff's right to obtain a permanent protection visa. It was not necessary for the Court to address the validity of the "national interest" criterion upon which the Minister relied in refusing the plaintiff's application.

Immediately following the Full Court making its orders answering the questions reserved for its opinion, French CJ made an order commanding the Minister to grant the plaintiff a permanent protection visa.

- *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.*

Please direct enquiries to Ben Wickham, Senior Executive Deputy Registrar
Telephone: (02) 6270 6893
Email: bwickham@hcourt.gov.au Website: www.hcourt.gov.au