



HIGH COURT OF AUSTRALIA

17 December 2015

WEI v MINISTER FOR IMMIGRATION AND BORDER PROTECTION

[2015] HCA 51

Today the High Court unanimously held that a decision of a delegate of the Minister for Immigration and Border Protection ("the Minister") to cancel the plaintiff's student visa under s 116(1)(b) of the *Migration Act* 1958 (Cth) for failure to comply with a condition of his visa was affected by jurisdictional error.

The plaintiff, a citizen of the People's Republic of China, held a student visa. It was a condition of his visa that he be enrolled in a "registered course" provided by a "registered provider" under the *Education Services for Overseas Students Act* 2000 (Cth) ("the ESOS Act"). Section 19 of the ESOS Act requires registered providers to give information about student visa holders to the Secretary of the Department of Education and Training, including information confirming their enrolment. The information is stored on an electronic database known as "PRISMS" and can be accessed by officers of the Department of Immigration and Border Protection ("the Department").

Between June 2013 and June 2014, the plaintiff was enrolled in a registered course provided by a registered provider. However, confirmation of the plaintiff's enrolment was not recorded in PRISMS. On the basis of outdated information in PRISMS, officers of the Department formed the view in early 2014 that the plaintiff was not enrolled in a registered course. The officers formally complied with statutory requirements to notify the plaintiff that consideration was being given to cancelling his visa, but the plaintiff did not receive notice of that consideration. The plaintiff's visa was cancelled by a delegate of the Minister on 20 March 2014. The plaintiff discovered that his visa had been cancelled on 2 October 2014 and sought review of the cancellation decision in the Migration Review Tribunal. The Tribunal determined that it did not have jurisdiction to review the decision.

The plaintiff filed an application for an order to show cause in the original jurisdiction of the High Court, seeking writs of certiorari and prohibition to quash the decision of the delegate and to prevent the Minister from giving effect to the delegate's decision. The Court unanimously held that the delegate's decision to cancel the plaintiff's visa was affected by jurisdictional error. By majority, the Court held that the delegate's satisfaction that the plaintiff was in breach of a visa condition was formed by a process of fact-finding tainted by the registered provider's failure to perform its imperative statutory duty to upload onto PRISMS confirmation of the plaintiff's enrolment. The Court granted the relief sought by the plaintiff.

- *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.*