HIGH COURT OF AUSTRALIA

10 April 2024

MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS v MCQUEEN
[2024] HCA 11

Today, the High Court unanimously allowed an appeal from a judgment of the Full Court of the Federal Court of Australia. The principal issue was whether the Minister, when personally exercising the power conferred by s 501CA(4) of the *Migration Act 1958* (Cth) ("the Act") to revoke a decision made under s 501(3A) to cancel a visa granted to a person, is required to personally read the representations made by that person to the Minister, or whether the Minister may consider them by examining other documents summarising those representations.

The respondent is a citizen of the United States of America whose visa was mandatorily cancelled in 2019 pursuant to s 501(3A) of the Act ("the cancellation decision") because the Minister was satisfied that the respondent did not pass the "character test" as defined in s 501(6) of the Act. The respondent made representations to the Minister seeking revocation of the cancellation decision. For that purpose, the Minister was supplied by the Department of Home Affairs with: a "Submission" which summarised the respondent's representations ("the departmental submission"); a draft statement of reasons in support of a decision not to revoke the cancellation decision; and copies of all actual representations made by the respondent, and on his behalf, as well as other relevant material. In April 2021, the Minister, having elected to make the decision personally, decided not to revoke the cancellation decision, adopting as his reasons for decision the draft reasons provided to him.

The primary judge found that the Minister did not read anything beyond the departmental submission and the draft statement of reasons when making his decision. The primary judge held that, in exercising the power under s 501CA(4), the Minister was obliged to give proper, genuine and realistic consideration to the merits of the respondent's representations. When personally exercising the power, that could only be achieved by the Minister personally reading, considering and understanding the representations made. The summary of those materials in the departmental submission was no adequate substitute. The Full Court of the Federal Court agreed with the primary judge, holding that the choice to exercise the power under s 501CA(4) personally obliged the Minister to "personally and directly consider the representations made in support of revocation". Before the High Court, there was no dispute that the Minister read only the departmental submission and the draft statement of reasons prior to making his decision.

The High Court held that it is not a condition of the valid exercise of the power conferred by s 501CA(4) for the Minister, when personally exercising that power, personally to read and examine the submissions, representations and other material received in every case. The Minister may rely instead upon departmental briefs and submissions which accurately summarise that material. So long as the representations made are appropriate to be summarised and that process of distillation is accurate and provides a full account of the essential content, it will be lawful for the Minister to read a summary and nothing more. The High Court did not accept that the summary in the departmental submission and draft reasons in this case was "deficient". Accordingly, the Minister was entitled to rely upon the departmental submission in making his decision.

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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