



HIGH COURT OF AUSTRALIA

17 April 2024

MILLER v MINISTER FOR IMMIGRATION, CITIZENSHIP
AND MULTICULTURAL AFFAIRS & ANOR
[2024] HCA 13

Today, the High Court unanimously allowed an appeal from a decision of the Full Court of the Federal Court of Australia. The question in the appeal was whether non-compliance with the requirement of s 29(1)(c) of the *Administrative Appeals Tribunal Act 1975* (Cth) ("the AAT Act") – that an application to the Administrative Appeals Tribunal ("the Tribunal") for review of a decision "must contain a statement of the reasons for the application" – results in invalidity of the application such that the jurisdiction of the Tribunal to review the decision is not engaged.

Mr Miller is a Fijian national whose visa was cancelled under s 501(3A) of the *Migration Act 1958* (Cth). A delegate of the Minister decided under s 501CA(4) not to revoke that original decision on the basis that the delegate was not satisfied that there was "another reason why the original decision should be revoked". Mr Miller was notified of the decision of the delegate on 16 March 2021. Section 500(6B) of the *Migration Act* required any application to the Tribunal for review of a decision under s 501CA(4) to be made within nine days after the day of notification. Mr Miller's migration agent made an application to the Tribunal for review of the decision of the delegate on 24 March 2021. The application made by the migration agent contained no statement of the reasons for the application.

In response to a request by the Tribunal at a directions hearing, Mr Miller's solicitors provided a statement of reasons to the Tribunal by email on 9 April 2021. By that time, the nine-day period set by s 500(6B) of the *Migration Act* had expired. Under the heading "Why do you claim the decision is wrong?", the email stated, "[t]he Minister erred in concluding that there is not another reason why the original decision to cancel the applicant's ... visa should be revoked". There was no dispute that this statement would have been sufficient to comply with s 29(1)(c) of the AAT Act had it been contained in the application made on 24 March 2021. The Tribunal considered the application to have engaged its jurisdiction despite the application's non-compliance with s 29(1)(c) and proceeded to review the decision of the delegate. The Tribunal ultimately decided to affirm the decision of the delegate.

Mr Miller applied to the Federal Court of Australia for judicial review of the decision of the Tribunal. At the hearing of that application, the Minister conceded that, if the jurisdiction of the Tribunal was engaged, then its decision was affected by jurisdictional error, but contended that the non-compliance with s 29(1)(c) of the AAT Act meant that the application made on 24 March 2021 failed to engage the jurisdiction of the Tribunal at all. The primary judge accepted the contention of the Minister. The Full Court of the Federal Court dismissed an appeal.

The High Court held that non-compliance with s 29(1)(c) of the AAT Act does not result in invalidity of an application for review such that the jurisdiction of the Tribunal is not engaged. Applying the principle in *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, the Court held that there could not be discerned within the overall context of the AAT Act a legislative purpose to invalidate an application and thereby to deprive the Tribunal of jurisdiction for want of compliance with the requirement of s 29(1)(c), a condition

which requires the provision of information entirely subjective to the applicant, compliance with which might be entirely inutile and non-compliance with which would be readily remediable by directions made by the Tribunal within jurisdiction. The use of imperative language in s 29(1)(c) was little more than that which posed the *Project Blue Sky* question and did not, in the context of the AAT Act, necessarily point to an affirmative answer.

- *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.*