



HIGH COURT OF AUSTRALIA

8 May 2013

MINISTER FOR IMMIGRATION AND CITIZENSHIP v XIUJUAN LI & ANOR

[2013] HCA 18

Today the High Court unanimously dismissed an appeal from a decision of the Full Court of the Federal Court of Australia, which held that a refusal by the Migration Review Tribunal ("the Tribunal") to adjourn review proceedings was unreasonable.

The first respondent, Ms Xiujuan Li, was refused a skilled overseas student residence visa by a delegate of the Minister for Immigration and Citizenship ("the Minister") on the basis that some of the employment history provided to support the assessment of her relevant skills was not genuine. Ms Li applied to the Tribunal for a review of the delegate's decision. She also applied for a fresh skills assessment. Upon obtaining that assessment, Ms Li's migration agent informed the Tribunal that it was unfavourable but explained that because fundamental errors had been made in it, Ms Li was confident of succeeding on her application to the assessing authority for a review. The migration agent requested the Tribunal delay making a final decision on Ms Li's review application until the skills assessment review was finalised. The Tribunal refused that request. It considered that Ms Li had been provided with enough opportunities to present her case and was not prepared to delay any further. The Tribunal found that, because the first skills assessment had been affected by fraud, the relevant visa criterion was not met. The delegate's decision was affirmed.

Ms Li successfully applied for review of the Tribunal's decision to the Federal Magistrates Court of Australia. Burnett FM considered that the Tribunal's decision to proceed was unreasonable in circumstances where the review of the second skills assessment was the only outstanding matter and where it could be inferred that Ms Li was not attempting to deliberately delay a decision in her case.

The Full Court of the Federal Court unanimously dismissed the Minister's appeal. Greenwood and Logan JJ held that the Tribunal had exercised its discretion to adjourn, pursuant to s 363(1)(b) of the *Migration Act* 1958 (Cth), in an unreasonable manner. The Minister appealed by special leave to the High Court.

The High Court held that the Tribunal's exercise of the discretion under s 363(1)(b) was unreasonable. The Tribunal's reasons failed to identify any consideration weighing in favour of the abrupt conclusion it brought to the review and none was suggested by the Minister on the appeal. The failure by the Tribunal to discharge its function under s 363(1)(b) of the *Migration Act* according to law meant that the Tribunal had acted beyond its jurisdiction in affirming the delegate's 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.*