HIGH COURT OF AUSTRALIA

20 June 2014

PLAINTIFF M150 OF 2013 BY HIS LITIGATION GUARDIAN SISTER BRIGID MARIE ARTHUR v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR

[2014] HCA 25

Today the High Court unanimously held that the Minister for Immigration and Border Protection ("the Minister") did not have the power under s 85 of the *Migration Act* 1958 (Cth) ("the Act") to limit the number of protection visas that may be granted in a specified financial year.

The judgment in this matter should be read with the judgment handed down today in the concurrently heard matter *Plaintiff S297/2013 v Minister for Immigration and Border Protection* [2014] HCA 24.

The plaintiff is an Ethiopian national who arrived in Australia as a stowaway on a cargo ship in 2013. He did not have a visa and was, therefore, an unlawful non-citizen within the meaning of the Act. He made a valid application for a protection visa. The Refugee Review Tribunal determined that he was a refugee within the meaning of the Refugees Convention, satisfying the criterion for a protection visa under s 36(2)(a) of the Act. However, he has been neither granted nor refused a protection visa because of an instrument signed by the Minister on 4 March 2014, which purported to determine under s 85 of the Act the maximum number of protection visas that may be granted in the financial year ending 30 June 2014. That maximum number having been reached, the grant of a protection visa to the plaintiff in this financial year would exceed that limit.

Section 85 of the Act provides that the Minister may, by notice in the *Commonwealth of Australia Gazette*, determine the maximum number of visas of a specified class that may be granted in a specified financial year. Protection visas are a class of visa provided for by s 36. Under s 65, the Minister has a duty, after considering a valid application for a visa, to grant the visa if satisfied that certain conditions are met and to refuse to grant the visa if not so satisfied. Section 65A imposes a duty on the Minister to make a decision on protection visa applications within 90 days.

In proceedings initiated in the High Court, the plaintiff claimed that the instrument limiting the number of protection visas which may be granted was invalid and that the Minister was bound to consider and determine his application and grant him a protection visa. A special case stated questions of law for determination by the Full Court.

The High Court held that the instrument was invalid. In light of the time limit imposed by s 65A on the determination of protection visa applications, s 85 did not empower the Minister to determine the maximum number of protection visas that may be granted in a financial year. The Court ordered that the Minister consider and determine the plaintiff's application for a protection visa according to law.

- *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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