



## HIGH COURT OF AUSTRALIA

14 October 2020

AUS17 v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR  
[2020] HCA 37

Today the High Court unanimously allowed an appeal from a judgment of the Federal Court of Australia ("the Federal Court") concerning a review by the Immigration Assessment Authority ("the Authority") under Pt 7AA of the *Migration Act 1958* (Cth) ("the Act") of a decision by the Minister for Immigration and Border Protection ("the Minister") to refuse to grant the appellant a protection visa. Section 473DD of the Act relevantly provides that the Authority must not consider "new information" unless: the Authority is satisfied that there are exceptional circumstances to justify considering the new information (s 473DD(a)); and the applicant satisfies the Authority that the new information was not, and could not have been, provided to the Minister before the Minister made the decision (s 473DD(b)(i)) or that it is "credible personal information" which was not previously known and, had it been known, may have affected the consideration of the applicant's claims (s 473DD(b)(ii)). The issue on appeal was whether in finding that "new information" could not be considered, the Authority was required to assess the information against the criteria in both ss 473DD(b)(i) and 473DD(b)(ii) before assessing whether there were "exceptional circumstances" under s 473DD(a).

The Minister's delegate refused to grant the appellant a protection visa. On review by the Authority, the appellant's representative provided the Authority with a letter that post-dated the decision of the delegate and was supportive of the appellant's claims. The Authority found that the letter was "new information" and did not take it into account in reaching its decision. In doing so, the Authority assessed the letter against the criterion in s 473DD(b)(i), finding that criterion not to be met. It went on to assess the letter against the criterion in s 473DD(a), finding that criterion to also not be met. It did not assess the letter against the criterion in s 473DD(b)(ii).

The Federal Circuit Court relevantly held that the Authority fell into error by not considering both sub-paragraphs of s 473DD(b) so as to inform its consideration of s 473DD(a). The Federal Court allowed an appeal from the Federal Circuit Court's decision.

The High Court unanimously overturned the Federal Court's decision, holding that the Authority erred by not considering both sub-paragraphs of s 473DD(b) and then taking those assessments into account in its consideration of s 473DD(a). The Court held that s 473DD requires the Authority to assess new information against the criteria in both ss 473DD(b)(i) and 473DD(b)(ii), and then, providing that at least one of those criteria are met, take that assessment into account in its consideration of whether there are exceptional circumstances under s 473DD(a), before concluding that it is prohibited from considering the new information.

*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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