

HIGH COURT OF AUSTRALIA

EDELMAN J

PGDX

PLAINTIFF

AND

THE HON JUSTICE LISA HESPE A JUDGE OF THE
FEDERAL COURT OF AUSTRALIA & ANOR

DEFENDANTS

[2024] HCASJ 4

Date of Judgment: 7 February 2024

M88 of 2023

ORDERS

- 1. Application dismissed.*
- 2. The plaintiff pay the second defendant's costs.*

Representation

The plaintiff is unrepresented

No appearance for the first defendant

The second defendant is represented by the Australian Government Solicitor

1 EDELMAN J. This is an application in this Court's original jurisdiction for a constitutional or other writ. The applicant, PGDX, seeks a writ of certiorari to quash a decision of Hespe J in the Federal Court of Australia which refused him an extension of time within which to bring an application for judicial review of a decision of the Administrative Appeals Tribunal ("the Tribunal"). PGDX also seeks a writ of mandamus to compel Hespe J to re-determine his application. PGDX brings the application in the original jurisdiction of this Court because the decision of Hespe J to refuse him an extension of time could not have been the subject of an appeal or an application for special leave to appeal.¹

2 The background to this application is the mandatory cancellation, under s 501(3A) of the *Migration Act 1958* (Cth), of PGDX's Regional Sponsored Migration Scheme visa due to his conviction for aggravated sexual assault and his sentence to five years' imprisonment. On 7 December 2020, acting under s 501CA(4) of the *Migration Act 1958* (Cth), the Minister refused to revoke that mandatory cancellation.

3 On 5 May 2022, the Tribunal affirmed the refusal decision of the Minister.² An earlier affirmation by the Tribunal had been quashed by Kerr J in the Federal Court in 2021.³

4 On 25 January 2023, PGDX sought judicial review of the Tribunal decision. PGDX's application was nearly seven months late. Pursuant to s 477A of the *Migration Act 1958* (Cth), PGDX's application required an extension of time. The Federal Court (Hespe J) considered the length of PGDX's delay in bringing his application, the lack of explanation for that delay, and the merits of PGDX's proposed grounds of review. Her Honour held that none of PGDX's proposed grounds of judicial review had sufficient merit to warrant the grant of an extension of time.

5 In this application, PGDX re-asserts the merit of the two grounds of review upon which he relied in the Federal Court. There is nothing in PGDX's application to this Court that demonstrates any error, still less jurisdictional error, in the decision of Hespe J. The decision of Hespe J followed the proper approach to an

1 See *Migration Act 1958* (Cth), s 476A(3)(b) and (4); *Federal Court of Australia Act 1976* (Cth), s 33(2). See also *Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 96 ALJR 819 at 826-827 [26].

2 See *PGDX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration)* [2022] AATA 1034.

3 See *PGDX v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCA 1235.

2.

application for an extension of time under s 477A(2) of the *Migration Act 1958* (Cth).⁴

- 6 There is no real prospect that this application would be advanced by a further oral hearing. The application does not disclose any arguable basis for the relief sought. The application should be determined on the papers without listing it for an oral hearing under r 25.09.1 of the *High Court Rules 2004* (Cth). In accordance with the procedure in r 25.09.2 of the *High Court Rules 2004* (Cth), the application should be dismissed with costs.

4 *Tu'uta Katoa v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 96 ALJR 819 at 824 [12]-[14], 825-826 [19], 835-836 [62]-[63].