HIGH COURT OF AUSTRALIA

STEWARD J

PLAINTIFF M87/2023 PLAINTIFF

AND

MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS DEFENDANT

[2024] HCASJ 42
Date of Hearing: 30 May 2024
Date of Judgment: 25 November 2024
M87 of 2023

ORDERS

1. *The time for filing the plaintiff's amended application filed on 20 February 2024 for a constitutional or other writ is extended to 20 February 2024.*

2. *The plaintiff's amended application filed on 20 February 2024 for a constitutional or other writ is dismissed.*

3. *The plaintiff pay the defendant's costs.*

Representation

A N P McBeth for the plaintiff (instructed by Russell Kennedy Lawyers)

K N Hooper for the defendant (instructed by Australian Government Solicitor)

1 STEWARD J. The plaintiff is from the Democratic Republic of Timor-Leste ("East Timor"). He first arrived in Australia in 2013 on a tourist visa. He thereafter lawfully returned to Australia on three occasions having successfully obtained two business visas and one Pacific Labour Scheme visa. In 2021 he applied for a Protection (Subclass 866) visa ("a protection visa"). In 2023 this was refused by a delegate of the Minister. The plaintiff seeks judicial review of that decision in the original jurisdiction of this Court. For the reasons that follow, that application must be dismissed. In that respect, it has been unnecessary for me to hold an oral hearing in this matter given the detailed assistance that the Court has received from counsel for both parties.

2 This matter arises in the original jurisdiction of the Court because the plaintiff was out of time to make an application for review in what was formerly the Administrative Appeals Tribunal ("AAT"). That tribunal had no power to extend the period within which to make such an application. The matter cannot be remitted to Division 2 of the Federal Circuit and Family Court of Australia because the parties accept that the delegate's decision is a "primary decision" for the purposes s 476(2) of the *Migration Act 1958* (Cth) ("the Act").[1] There is otherwise no power to remit the matter to the Federal Court of Australia, and the matter is plainly within the jurisdiction of this Court under s 75(v) of the Constitution as the plaintiff seeks orders of certiorari and mandamus against an officer of the Commonwealth. The result is a regrettable use of the resources of this Court; this matter should have been heard in the AAT.

Relevant statutory scheme

3 The plaintiff seeks a protection visa on the alternative grounds that he is a refugee as defined under the Act for the purposes of s 36(2)(a), or that he is a person in respect of whom Australia owes complementary protection obligations for the purposes of s 36(2)(aa) of the Act.

4 Concerning s 36(2)(a), and the definition of who is a refugee, the delegate concluded that the plaintiff did not have a well-founded fear of persecution in East Timor because "effective protection measures" would be available to him in that country. Section 5LA of the Act defines when such measures are available as follows:

> "(1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:

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1 cf *MZXOT v Minister for Immigration and Citizenship* (2008) 233 CLR 601 at 615 [11].

(a) protection against persecution could be provided to the person by:

(i) the relevant State; or

(ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and

(b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.

(2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:

(a) the person can access the protection; and

(b) the protection is durable; and

(c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system."

5 The plaintiff relevantly contends that the delegate erred in construing this provision.

6 Concerning the plaintiff's claim for complementary protection, the broad equivalent to s 5LA is set out in s 36(2B) of the Act. Again, the plaintiff contends that it was misconstrued by the delegate. It provides:

"(2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:

(a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or

(b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or

(c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally."

7 Section 36(2A) defines when a person will suffer "significant harm" as follows:

> "A non-citizen will suffer ***significant harm*** if:
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> (a) the non-citizen will be arbitrarily deprived of his or her life; or
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> (b) the death penalty will be carried out on the non-citizen; or
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> (c) the non-citizen will be subjected to torture; or
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> (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
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> (e) the non-citizen will be subjected to degrading treatment or punishment."

The plaintiff's claims

8 In broad terms, the plaintiff claims to fear harm if he were returned to East Timor by reason of his gender identity and sexual orientation, including from his family. In particular, the plaintiff fears that his family will make him marry a woman. In each case, he considers East Timor to be a conservative Catholic country and claims that the authorities and the law of East Timor would not provide him with adequate protection. Many of his claims were accepted by the delegate. The plaintiff's claims were as follows:

(a) the plaintiff is gender diverse and identifies as non-binary;

(b) the plaintiff is attracted to men and may be perceived as being a gay man;

(c) the plaintiff's family in East-Timor are devout Catholics;

(d) the plaintiff was harmed by members of their family for reasons related to his perceived gender identity and sexual orientation;

(e) the plaintiff concealed his gender identity and sexual orientation in East Timor;

(f) the plaintiff was targeted for harm in the workplace because of his feminine demeanour. This amounted to verbal abuse and physical attacks; and

(h) the plaintiff is a member of the lesbian, gay, bisexual, transgender, queer, intersex and asexual ("LGBTQIA+") community in Melbourne.

9 It should be accepted that the plaintiff honestly and reasonably seeks to maintain his residence in Australia, and has good reasons for not wanting to return

to East Timor. Regrettably for him, the delegate found that those reasons did not justify the grant of a protection visa.

The delegate's disposition

10 Relying on country information, which the plaintiff accepts as accurate, the delegate noted that in East Timor "same-sex acts are legal (since 1975) and there is protection against hate crimes". The delegate also observed that, for example, the "LGBTI rights database *Equaldex*" assessed East Timor positively because "there are no laws restricting the discussion or promotion of LGBTQ+ topics ... and the age of consent is equal for all sexual orientations" but also negatively because same-sex marriage is not recognised, changing gender is illegal, and "there are no protections against employment discrimination, conversion therapy is not banned, and blood donation by men who have sex with men ... is 'banned'". The delegate also recognised that there are a number of advocacy groups for the "LGBTIQ community" in East Timor. In 2016, for instance, East Timor reported to the United Nations General Assembly on its minority groups in the following terms:

> "Timor-Leste also recognizes other minority groups, especially groups with different sexual orientations such as lesbian, gay, bi-sexual and transgender (LGBT) in Timor-Leste. There is now a group called the coalition of diversity and advocacy (CODIVA) which was established in 2014, and is a member of the NGO forum. This group works with State agents such as the PNTL [National Police of Timor-Leste], MS [sic for MSS Ministerio da Solidariedade Social, Ministry of Social Solidarity], CCF [Christian Children's Fund], PDHJ [Provedoria dos Direitos Humanos e Justiça, Ombudsman for Human Rights and Justice] and the HIV/AIDS Commission to provide advocacy on HIV/AIDS and rights in order to obtain protection for minority groups, especially those with different sexual orientations, at the national and municipal levels. The CODIVA has a network in six municipalities, namely Baucau, Viqueque, Bobonaro, Oecusse, Aileu and Covalima."

11 In that respect, the delegate determined that an "active, albeit emerging, LGBTIQ community" existed in Dili, where the plaintiff had once relocated.

12 The delegate reviewed material relating to the East Timorese police force. She determined that the police are "largely a professional, albeit under-resourced, law enforcement organisation" which is generally seen to be impartial and "has demonstrated its commitment to increasing LGBTIQA awareness and working with community leaders to protect all individuals from societal harassment, discrimination, and violence". It was found that the police rarely refer cases "for investigation and prosecution" but instead play "an important role in resolving disputes through mediation". Overall, it was found that the East Timorese police force is "reasonably effective" and that the judicial system is "impartial".

13 The delegate also determined, in a separate paragraph, that the plaintiff had avoided an arranged marriage in the past, and that if pressure to marry were to occur again, the plaintiff "would have access to a number of advocacy groups and support networks in the LGBTIQ community in Dili".

14 The delegate then turned to the risk of harm and said:

> "I accept that the [plaintiff] has been harmed in the past for reasons related to their gender identity and sexual orientation, and based on the information currently before me, I find that the [plaintiff] would be able to avail themselves of effective state protection on return to Timor-Leste should they need to do so.
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> As a result, I am satisfied that there are effective protection measures, as defined in s 5LA of the Act, available to the [plaintiff] in Timor-Leste and that, therefore, they do not have a well-founded fear of persecution under s 5J(2)."

15 The last paragraph of the delegate's decision set out above is said to contain an error of law (the "impugned paragraph"). That alleged error is considered below.

16 The delegate's consideration of the claims for complementary protection followed from the foregoing conclusion but, importantly, did take account of the personal circumstances of the plaintiff. The delegate's reasoning was as follows:

> "I have considered whether the [plaintiff] will face a real risk of suffering significant harm, as defined in s 36(2A) of the Act, from family and community members for reasons related to their gender diversity and sexual orientation if they return to TIMOR-LESTE. In considering this criterion, I have taken into account the personal circumstances of the [plaintiff] as well as the country information above. I find that the [plaintiff] could obtain, from an authority of the country, protection such that there would not be a real risk that they will suffer significant harm as provided for in s 36(2B)(b). For these reasons, I am not satisfied that there is a real risk that the [plaintiff] will suffer significant harm as defined in s 36(2A).
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> ***Finding***
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> I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of being removed to Timor-Leste, there is a real risk [the plaintiff] will suffer significant harm as defined in s 36(2A) of the Act. Therefore, I am also not satisfied that [the plaintiff] is a person in respect of whom Australia has protection obligations as provided for in s 36(2)(aa) of the Act."

Extension of time

17 The plaintiff needs an extension of time within which to file his application for a constitutional or other writ. An affidavit has been filed, affirmed by Ms Arti Chetty of the firm Russell Kennedy Lawyers, setting out the circumstances leading up to the making of that application. It is unnecessary to set out those details here. The respondent does not oppose the extension of time, save that he contends that there is no utility in granting it as the plaintiff's claims are futile. I respectfully disagree. The claims have merit, although I do not accept them. An extension of time should be granted.

18 In that context, the Court thanks Ms Arti Chetty, the firm Russell Kennedy Lawyers, and Mr Adam McBeth of counsel, who have all acted pro bono for the plaintiff. The Court is very grateful for the assistance it has received and acknowledges their very fine work.

Misconstruction of s 5LA

19 There are two aspects to this ground of review.

The first aspect

20 Not every administrative decision-maker writes with the clarity of Robert Louis Stevenson or indeed Laurie Lee. Nor do they necessarily have the time to produce reasons that are perfect. They are under some pressure to make decisions in a timely fashion. It is in that context that a court should exercise a degree of common sense when construing the reasons of a delegate; they should be read realistically. As the Full Court of the Federal Court of Australia once famously observed about the reception of reasons from the AAT:[2]

> "The Court will not be concerned with looseness in the language of the Tribunal nor with unhappy phrasing of the Tribunal's thoughts ... The reasons for the decision under review are not to be construed minutely and finely with an eye keenly attuned to the perception of error".

21 The plaintiff's complaint about the delegate's construction of s 5LA reads the impugned paragraph as reaching a conclusion that addressed both his fear of harm and physical abuse as well as his apprehension of being forced into marriage with a woman. If that is the correct way of reading that paragraph, then the plaintiff has a point. That is because, on one view, the paragraph appears to limit the answer

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2 *Collector of Customs v Pozzolanic* (1993) 43 FCR 280 at 287; as followed in *Minister for Immigration & Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 271-2.

to the plaintiff's two fears to there being "effective protection measures" in East Timor. In that respect the plaintiff emphasises the word "therefore".

22 Assuming that is so, there is a possible problem. That is because the term "effective protection measures" is defined in s 5LA to include measures provided by a "relevant State" or by "a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State". It will be recalled that the delegate's answer to the plaintiff's fear about forced marriage was that he had previously been able to avoid this risk and that were he to face the prospect of forced marriage again, he would have access to "a number of advocacy groups and support networks in the LGBTIQ community". Plainly, such groups and networks are not a relevant State or an organisation that controls a relevant State.

23 However, I think the plaintiff has construed the reasons too "minutely" and with an "eye keenly attuned to the perception of error". There is nothing to suggest that the delegate did not know that "effective protective measures" are confined to a State or State-like body. The section says so plainly. The better view is that the impugned paragraph was an answer to the immediately preceding paragraph which addressed the plaintiff being "harmed in the past for reasons related to their gender identity and sexual orientation". It was not an answer to the separate preceding paragraph which addressed the risk of forced marriage. The plaintiff does not otherwise contend that the reason given in that paragraph contains any error of law. In my view, the observation made by the delegate about the risk of forced marriage, which commences with the phrase "I also note", expressed a finding that, without any State support, this risk would not eventuate. That the finding appears in a section of a decision dealing with "State protection" is somewhat clumsy, but does not otherwise constitute an error of law.

The second aspect

24 The second aspect of this ground was more elusive. One argument was that because, as the delegate found, the East Timorese police rarely refer matters for investigation and prosecution and instead seek to resolve disputes through mediation, they could not provide effective protection. That, with respect, is really an attack on the merits of the delegate's findings. It does not demonstrate an error of law. In addition, the plaintiff submitted that the delegate, when applying s 5LA, failed to have regard to the plaintiff's specific circumstances and to the particular risk of harm that he claimed to face. However, I consider that the delegate's findings that the East Timorese police force is "reasonably effective" and that the East Timorese "judicial system is impartial and relatively accessible" constitute a direct and rational response to the plaintiff's claims and circumstances, of which the delegate was undoubtedly aware.

25 Another argument raised was to the effect that the delegate failed to make findings which addressed each of the sub-paragraphs of s 5LA(2) of the Act. That

section is a deeming provision. When its elements are satisfied, a State "is taken to be able to offer protection against persecution to a person". With respect, there is nothing in the reasons to suggest that the delegate relied upon this deeming provision. Instead, the findings made relate to s 5LA(1) (although this could have been made clearer). The findings address the plaintiff's claim that East Timor does not have a reliably effective police force: a claim that attacked the actual, not deemed, ability of East Timor to provide protection to the plaintiff and its willingness and ability to do so for the purposes of s 5LA(1). That claim was, however, rejected.

Unreasonable or irrational findings

26 The plaintiff contends that the findings concerning the existence of effective protection measures were unreasonable (or irrational) because they rested – at least in part – on irrational conclusions concerning the country information relied upon by the delegate.

27 It is unnecessary to repeat the jurisprudence in this area. The contention that a finding is unreasonable or irrational is not made out by disagreeing with the merits of a finding; even strong disagreement is insufficient. It is also not made out by mistaken reasoning. It requires the presence of irrational or illogical reasoning or processes or outcomes. Irrational or illogical reasoning is not poor or very poor reasoning; it is reasoning which does not – in any way – make sense; it is reasoning which completely offends logical thinking. The same applies to unreasonable or irrational outcomes. Such reasoning or outcomes arise on only the rarest of occasions.

28 The plaintiff relied on two passages in the country information, as set out in the delegate's reasons. The first passage was that members of the public in East Timor:

> "believe that all people are treated equally by police and community leaders, although this appears to be less the case for members of the Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual (LGBTQIA+) community."

29 The second passage was as follows:

> "[LGBTQIA+] people continue to face considerable violence, discrimination and exclusion because they do not conform to perceived norms of gender as binary and fixed, and attitudes which assume all people are heterosexual".

30 These findings, it was said, could not rationally support the conclusion drawn by the delegate that the East Timorese police force provided effective protection from persecution directed towards the plaintiff. The immediate difficulty facing this contention is that there was a large amount of country

information that supported the delegate's conclusion. For example, there was information regarding the establishment of the "CODIVA" group referred to above, and the training that it provided to the East Timorese police force. Another item of country information, relied upon by the delegate, states as follows:

> "In addition, the [Human Rights Adviser] supported the organization of three two-day training courses on human rights for youth representatives involved in the Community Police Council from 21 villages in Ainaro Municipality. These training courses were organized by the Commander of the National Police of Timor-Leste of the Municipality of Ainaro. [The United Nations Office of the High Commissioner for Human Rights] facilitated sessions on human rights, the rights of persons with disabilities and of LGBTI persons, while the police trainers focused on the role of the Community Police Council. This engagement contributed to empowering youth to respect and protect the rights of vulnerable groups in their community. The [National Human Rights Institution] from the Manufahi Regional Centre was a partner in this initiative and shared information about its mandate and how to submit complaints."

31 The foregoing material rationally supports the conclusion that the delegate reached. Naturally, there was other material supporting a finding of ongoing hardship experienced by LGBTQIA+ people. But it was for the delegate, and not for the Court, to draw a conclusion from this material. The conclusion that the delegate reached had at least some basis in the material. It follows that the delegate's reasoning, and the outcome of that reasoning, were not irrational or illogical in the required sense.

32 The plaintiff had another complaint about the delegate's finding that the East Timorese police play "an important role in resolving disputes through mediation". It was said that there was no basis in the country information set out in the reasons for that proposition of fact. This did not appear to be a complaint about unreasonableness; rather it appeared to be a contention that this finding was not supported by any evidence at all. In *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane*, this Court said, with respect to an exercise of power pursuant to s 501CA of the Act:[3]

> "If the Minister exercises the power conferred by s 501CA(4) and in giving reasons makes a finding of fact, the Minister must do so based on some evidence or other supporting material, rather than no evidence or no material, unless the finding is made in accordance with the Minister's

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3 (2021) 274 CLR 398 at 408 [17] (footnote omitted); see also *Australian Retailers Association v Reserve Bank of Australia* (2005) 148 FCR 446 at 587 [575] per Weinberg J, citing Aronson, Dyer and Groves, *Judicial Review of Administrative Action*, 3rd ed (2004) at 239.

> personal or specialised knowledge or by reference to that which is commonly known. By 'no evidence' this has traditionally meant 'not a skerrick of evidence'."

33 An important limb of the plaintiff's argument was the proposition that the Court is entitled to take the written reasons of the decision-maker as setting out the findings of fact that were material to the decision, and importantly, as reciting the evidence and other material which the decision-maker considered to be relevant to the findings made. The decisions of the Full Court of the Federal Court of Australia in *Minister for Immigration and Border Protection v MZYTS*,[4] and of this Court in *Minister for Immigration and Multicultural Affairs v Yusuf*,[5] were cited in support of this proposition.

34 The foregoing limb of the plaintiff's argument was important because the reasons of the delegate do not set out country information in support of the proposition that the East Timorese police are involved in mediations. At best, the referenced material says that community leaders use mediation. However, one of the items of country information referred to by the delegate, and extensively quoted from, was a lengthy survey undertaken by the Asia Foundation in East Timor. That survey stated:

> "Police work closely with community leaders to address crimes and disputes, and they play a range of roles including providing security and assisting with mediation."

35 The foregoing statement did not appear in the actual reasons of the delegate. Relying on *MZYTS* and *Yusuf*, the plaintiff in substance submits that, because the delegate did not set out this country information in her reasons, it must follow that this material did not form part of her reasoning process. Accordingly, her finding about the role played by police in mediation was baseless.

36 With very great respect, that submission is misconceived. *Yusuf* concerned decision-making by the AAT. Pursuant to s 430 of the Act, that Tribunal was relevantly obliged to "refer to the evidence or any other material on which the findings of fact were based". *MZYTS* concerned decision-making by the Refugee Review Tribunal, which was under the same obligation. In contrast, s 66 of the Act, which applied to the delegate in this case, merely obliged the delegate to, relevantly, specify the "criterion" that was not met, a provision or provisions of the Act justifying refusal, and "give written reasons...why the criterion was not satisfied or the provision prevented the grant of the visa". There is no explicit statutory obligation to set out the evidence on which findings of fact were based,

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4 (2013) 230 FCR 431 at 447 [49].

5 (2001) 206 CLR 323 at 331-332 [10], 338 [34] and 346 [68].

although, in the usual case this would be done as part of the giving of reasons in some way. But there is no legal obligation, in giving sufficient reasons, to set out in full every piece of evidence relied upon.

37 Here, it is clear that the delegate relied upon the contents of the survey referred to above. That survey contained evidence which supported the finding about police involvement in mediation. Inferentially, that survey was the basis for this finding. Indeed, it is impossible to reach any other conclusion. It follows that the delegate's finding was not baseless or irrational.

38 I otherwise reject the submission made by the plaintiff that the delegate's conclusion that the role played by the East Timorese police in resolving disputes through mediation was an effective means of protecting the plaintiff from harm is irrational. This might not be a very good justification for the decision-maker's conclusion, but that observation merely goes to the merits of the reasoning and not to its legality. The reliance upon the availability of mediation as one answer to the plaintiff's claim about the risk of harm is not reasoning which completely offends logical thinking.

Complementary protection

39 By the third ground, the plaintiff contends that the delegate misconstrued s 36(2B)(b) of the Act. In reality, the complaint is that due to the brevity of the delegate's reasons, the delegate failed to carry out the statutory task demanded by the provision. The delegate was of the view that the plaintiff could obtain, from an authority of East Timor, protection such that there would not be a real risk that the plaintiff would suffer significant harm as provided for in s 36(2B)(b). This conclusion was made, it was said "without any explanation of how the police and/or the courts could reduce the risk of harm feared by the [p]laintiff – in the form of physical violence, verbal attacks and the prospect of forced marriage to a woman".

40 With great respect, the claims made by the plaintiff never descended into any particular detail, and did not, it would appear, differ from those made in support of a finding that he was a refugee. In that respect two propositions are apt here. The first, from *Plaintiff M1/2021 v Minister for Home Affairs*, is as follows:[6]

> "It is also well-established that the requisite level of engagement by the decision-maker with the representations must occur within the bounds of rationality and reasonableness. What is necessary to comply with the statutory requirement for a valid exercise of power will necessarily depend on the nature, form and content of the representations. The requisite level of engagement – the degree of effort needed by the decision-maker – will

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6 (2022) 275 CLR 582 at 599 [25] (footnotes omitted).

> vary, among other things, according to the length, clarity and degree of relevance of the representations. The decision-maker is not required to consider claims that are not clearly articulated or which do not clearly arise on the materials before them."

41 The second proposition is from *DQU16 v Minister for Home Affairs*, and is as follows:[7]

> "Although the statutory questions posed by s 36(2)(a) and s 36(2)(aa) are different, it has long been recognised that, to the extent that the factual bases for claims under s 36(2)(a) and s 36(2)(aa) overlap, a decision-maker, when considering the complementary protection criterion under s 36(2)(aa), is entitled to refer to and rely on any relevant findings the decision-maker made when considering the refugee criterion under s 36(2)(a). The question under s 36(2)(aa) then is whether, in light of those and any other relevant findings, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm of the kind prescribed in s 36(2A), subject to s 36(2B) and (2C). And, as will be seen, that is what the [Immigration Assessment Authority] did in this case."

42 Given the highly generalised claims that were made, and then advanced, without apparent distinction in support of dual conclusions that the plaintiff was either a refugee, or a person to whom Australia owed complementary protection obligations, it was:

(a) appropriate for the delegate to rely on her earlier reasoning concerning the existence of effective protection measures, deployed for the purpose of considering s 36(2)(a), in order to address s 36(2)(aa); and

(b) her reasoning was otherwise sufficient, for the purposes of s 66 of the Act, in explaining why the plaintiff's claims failed.

43 It is true, as the plaintiff submits, that s 5LA is expressed in terms which are different to s 36(2B). But, in circumstances where the claims made are generalised and undifferentiated, those differences go nowhere. It was not shown how, for example with respect to the claim about the risk of physical attacks, the answer given about this risk by the delegate for the purposes of s 36(2)(a) was not also an adequate explanation for why this risk would not eventuate for the purposes of s 36(2)(aa). What else might have been said to address that risk, as it arose for complementary protection purposes, other than to observe that the East Timorese police force is "reasonably effective"? It was accordingly open to the delegate to find that, because of this and pursuant to s 36(2B) of the Act, "the non-citizen could

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7 (2021) 273 CLR 1 at 16 [27] (footnote omitted).

obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm." In that respect, the delegate expressly recorded that she had taken into account "the personal circumstances of the [plaintiff]".

44 For the foregoing reasons this application must be dismissed with costs. The orders of the Court are that:

(1) The time for filing the plaintiff's amended application filed on 20 February 2024 for a constitutional or other writ is extended to 20 February 2024.

(2) The plaintiff's amended application filed on 20 February 2024 for a constitutional or other writ is dismissed.

(3) The plaintiff pay the defendant's costs.