

HIGH COURT OF AUSTRALIA

JAGOT J

MD TIPU SULTAN & ORS

PLAINTIFFS

AND

MINISTER FOR IMMIGRATION AND
MULTICULTURAL AFFAIRS

DEFENDANT

[2025] HCASJ 17
Date of Hearing: 19 March 2025
Date of Judgment: 13 May 2025
S87 of 2024

ORDERS

- The amended application for a constitutional or other writ filed on 27 February 2025 is dismissed.*
- The plaintiffs pay the defendant's costs.*

Representation

L Boccabella for the plaintiffs (instructed by Parish Patience Immigration Lawyers)

H P T Bevan SC with T Liu for the defendant (instructed by Australian Government Solicitor)

JAGOT J.

Introduction

1 By amended application for a constitutional or other writ the plaintiffs seek: (a) a writ of certiorari setting aside a decision of a delegate of the Minister for Immigration and Multicultural Affairs (the "Minister") made on 5 June 2024 refusing the plaintiffs' application¹ for a Business Talent (Permanent) visa (subclass 132) in the Significant Business History stream (a "Subclass 132 visa") made on 18 June 2021; and (b) an order that the matter be remitted to the Minister to re-make the decision according to law. The parties agree that the Court has no power to remit the application for determination by another Court.²

2 The plaintiffs contend that the impugned decision is vitiated for jurisdictional error. The plaintiffs allege that the delegate failed to make an obvious inquiry about a fact critical to the decision, being the availability of audited financial statements which, had they been requested, would have been provided and would have established that the plaintiffs satisfied one of the primary criteria for the grant of the visa. They say this made the decision to refuse the grant of the visa legally unreasonable. They also allege that in circumstances where, according to the evidence, the "general practice" before 2024 was for delegates to notify an applicant that further information was needed to assess an application for a Subclass 132 visa, but the delegate in the present case did not do so and determined the application based only on the application as made, the decision was legally unreasonable on this further basis.

3 The application must be dismissed. As will be explained, two key factual predicates of the plaintiffs' case have not been proved. The first key factual predicate is that the plaintiffs had provided the audited financial statements to the South Australian government agency to obtain the required nomination from that agency enabling the plaintiffs to be invited to make the Subclass 132 visa application. The second key factual predicate, albeit not expressly acknowledged as such by the plaintiffs' submissions, is that the plaintiffs or their migration agent believed that the delegate appointed to assess their Subclass 132 visa application would request them to provide all required information to support the application before deciding whether to grant or refuse the application. The evidence is to the contrary of the first key factual predicate and does not support the second key factual predicate.

1 The second to fourth plaintiffs are members of the first plaintiff's family so a combined application for the visa could be made. See Subdiv 132.311 of Sch 2 to the *Migration Regulations 1994* (Cth).

2 *Migration Act 1958* (Cth), ss 476(2) and (4), s 476B(2).

Further, even if these two key factual predicates had been proved, they would not have had the legal significance the plaintiffs' submissions assume. The mere fact (if it were the fact, which it is not) that the South Australian government agency had been provided with the audited financial statements does not mean that the delegate was bound to request their provision by the plaintiffs to the delegate. And the mere fact (if it were the fact, which it has not been proved) that the plaintiffs or their migration agent believed that they would be requested to provide any missing information based on a "general practice" does not mean that a delegate or the Department of Home Affairs was bound to notify the plaintiffs and their migration agent of any change to a "general practice" before deciding whether to grant or refuse the application.

Further again, or in the alternative, the plaintiffs have not established that the asserted error by the delegate was material to the decision in fact made.

It follows that the plaintiffs cannot sustain their case that anything in the circumstances made it legally unreasonable for the delegate to determine the Subclass 132 visa application without having requested the plaintiffs to provide the audited financial statements.

Statutory framework

The *Migration Act 1958* (Cth) provides for prescribed classes of visas.³ Criteria for the making of a valid application by, and the grant of a visa or a particular class of visa to, an applicant are prescribed by regulation.⁴

The *Migration Regulations 1994* (Cth) prescribed a class of visa known as the Business Skills – Business Talent (Permanent) (Class EA) visa.⁵ A prescribed subclass of that class of visa was the Subclass 132 (Business Talent) visa in the Significant Business History stream (a "Subclass 132 visa").⁶ The *Migration Regulations* provided that to make a valid application for a Subclass 132 visa an applicant had to meet requirements including that: (1) the applicant had been invited, in writing, by the Minister to apply for the visa; (2) the applicant applied for the visa within the period stated in the application; and (3) the applicant had been nominated by a State or Territory government agency.⁷

³ *Migration Act*, ss 31, 46.

⁴ *Migration Act*, s 46.

⁵ *Migration Regulations*, r 2.01(1) and Sch 1 Pt 1 Item 1104AA.

⁶ *Migration Regulations*, r 2.02, Sch 1 Pt 1 Item 1104AA(6) and Sch 2 Subdiv 132.

⁷ *Migration Regulations*, Sch 1 Pt 1 Item 1104AA(4).

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9 The *Migration Regulations* also provided that the prescribed criteria for the grant to a person of a visa of a particular class were the "primary criteria" and "secondary criteria" set out in the *Migration Regulations* as relevant to that person.⁸ Subdivisions 132.2 and 132.3 of Sch 2 to the *Migration Regulations* identified the primary and secondary criteria for the grant to a person of a Subclass 132 visa. According to Subdiv 132.2 of Sch 2 to the *Migration Regulations*:

"If an applicant applies for a Subclass 132 visa in the Significant Business History stream, the criteria in Subdivisions 132.21 and 132.22 are the primary criteria for the grant of the visa.

...

All criteria must be satisfied at the time a decision is made on the application."

10 Subdivisions 132.21 and 132.22 contained several criteria including, for example, that: the "applicant has overall had a successful business career" (Subdiv 132.233); the applicant "genuinely has a realistic commitment to" establish a qualifying business in Australia or participate in an existing qualifying business in Australia (Subdiv 132.227(1)); and the applicant "genuinely has a realistic commitment to" maintain a substantial ownership interest in the relevant qualifying business and maintain a direct and continuous involvement in the management of that business in certain specified ways "in a manner that benefits the Australian economy" (Subdiv 132.227(2)).

11 Subdivision 132.225 also contained this primary criterion for a Subclass 132 visa:

"For at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa, the applicant's main business,^[9] or the applicant's main businesses together, had an annual turnover of at least AUD3 000 000."

12 The *Migration Act* included the following provisions:

"54 Minister must have regard to all information in application

- (1) The Minister must, in deciding whether to grant or refuse to grant a visa, have regard to all of the information in the application.

8 *Migration Regulations*, r 2.03.

9 "Main business" was defined in r 1.11 of the *Migration Regulations*.

4.

- (2) For the purposes of subsection (1), information is in an application if the information is:
 - (a) set out in the application;
 - (b) in a document attached to the application when it is made; or
 - (c) given under section 55.

...

55 Further information may be given

- (1) Until the Minister has made a decision whether to grant or refuse to grant a visa, the applicant may give the Minister any additional relevant information and the Minister must have regard to that information in making a decision.
- (2) Subsection (1) does not mean that the Minister is required to delay making a decision because the applicant might give, or has told the Minister that the applicant intends to give, further information.

56 Further information may be sought

- (1) In considering an application for a visa, the Minister may, if he or she wants to, get any information that he or she considers relevant but, if the Minister gets such information, the Minister must have regard to that information in making the decision whether to grant or refuse the visa.

..."

13 Section 63 of the *Migration Act* provided that (subject to certain other provisions which are not relevant) the Minister could grant or refuse to grant a visa at any time after the application had been made.

The visa application and the delegate's decision

14 In the application for the Subclass 132 visa made on 18 June 2021, under the heading "Turnover", the following information appeared:

"Turnover in Australian dollars (AUD) for your main business(es) for the best two of the last four fiscal years.

5.

Year 1: **2019**Year 1 amount: **50859608AUD**Year 2: **2020**Year 2 amount: **46410251AUD"**

Are these figures based on information provided in audited financial statements?

Yes"

15 It was common ground that the plaintiffs did not provide copies of the audited financial statements for the financial years ending 2019 and 2020 in support of the visa application, but that those audited financial statements existed and were available at all relevant times and that, if requested, the first plaintiff would have provided them. Further, the plaintiffs accepted that, while supporting documents could not have been electronically uploaded with the Subclass 132 visa application, they could have been sent to a post box or office or via email to the Department. The plaintiffs also accepted that that they never did so.

16 On 5 June 2024 the delegate notified the first plaintiff that the plaintiffs' application for the Subclass 132 visas made on 18 June 2021 had been refused. The attached decision record for the first plaintiff stated:

"Findings

On the basis of all of the information available to me, including the documents and information the applicant provided, I find the criteria for the grant of a Business Talent (subclass 132) in the Significant Business History stream visa are not satisfied.

Reasons

...

A visa cannot be granted unless the relevant criteria specified in the [Migration] Act and the [Migration] Regulations are satisfied.

In this case, I am not satisfied that clause 132.225 in Schedule 2 of the Regulations is satisfied. ...

A letter of acknowledgement of application was sent to the applicant on the same day of application lodgement, advising the applicant that a decision may be made on the application without requesting additional information and the applicant should provide the Department with all the information they consider relevant.

As there were no supporting documents provided to establish the applicant's claims following the lodgement of the online application, I am not satisfied

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that the Company ["Chhuya Agro Products Ltd", which was nominated by the first applicant as a "main business"] can be considered the applicant's main business or that the Company had the prescribed amount of turnover for at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa. The applicant therefore does not meet clause 132.225.

I have not made a finding as to the applicant's eligibility under all other criteria pertaining to the grant of a subclass 132 visa in the Significant Business History stream in the absence of supporting documents."

- 17 In respect of the second, third and fourth plaintiffs, the delegate found that the secondary criteria for the grant of the visa were not satisfied because, the first plaintiff having been refused a visa, they were not members of the family unit of a person who holds a Subclass 132 visa.

Factual findings

- 18 The plaintiffs relied on an affidavit of Carina Ford, Chair of the Migration Law Committee of the Law Council of Australia. Ms Ford's evidence was that: (a) at least for a decade before 2021, applications for Subclass 132 visas would generally take two to three years and sometimes longer to determine; (b) at some time after the making of the application, a delegate would be allocated to assess the visa, and this could be two to three years after the visa application was made; (c) if something was missing or needed to be updated, generally the Department would notify the applicant under s 56 of the *Migration Act* that further information was needed to assess the visa; and (d) at some stage in 2024, the Department generally ceased issuing s 56 notices and proceeded to grant or refuse Subclass 132 visas based on the information that had been provided in the application. Ms Ford said by way of overall summary:

"I do recognise that regularly the Department of Home Affairs states on websites and correspondence that all information must be provided at time of application and it's the preferred method to lodge applications decision ready, but given the complexities in this cohort and the processing times and that information may change between application and the time of decision, it was generally the practice to give an opportunity to provide further information."

- 19 The point of this evidence was to support the plaintiffs' contention that it was legally unreasonable for the delegate not to have requested that the plaintiffs provide the audited financial statements before determining the application.

- 20 The problem with this aspect of the plaintiffs' case is that, although I accept Ms Ford's evidence, it does not assist the plaintiffs in circumstances where: (a) while the primary criteria had to be satisfied at the time a decision was made on the application, the audited financial statements had to relate to two of the four

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fiscal years before the time of the invitation to apply for the visa; (b) therefore, it cannot be said that the plaintiffs could not have provided the audited financial statements at any time after making the application and before the application's determination; and (c) to the contrary, the audited financial statements existed before the application was made and could have been provided at any time after making the application and before the application's determination.

21 In these circumstances, even if an inference could be drawn that the plaintiffs or their migration agent believed that they would be requested to provide further information and could have provided such information at that time, including the audited financial statements, the case rises no higher than that the plaintiffs did not do what, as will be explained below, they were instructed to do when they could have done so.

22 In any event, however, no such inference of belief on the part of the plaintiffs or their migration agent would be drawn based on Ms Ford's evidence which: (a) is expressed in general terms; (b) is conditioned on a delegate considering that information was missing or needed to be updated; and (c) acknowledged that "the preferred method [is] to lodge applications decision ready". Nor would any inference be drawn of any belief on the part of the plaintiffs or their migration agent that the Department or a delegate would inform them of any change of the general practice given: (a) the lack of any evidence to that effect; and (b) the information in writing otherwise communicated to or available to the plaintiffs and their migration agent from the Department (identified below).

23 Apart from this, and contrary to the assertions in the written submissions for the plaintiffs, the plaintiffs' counsel properly conceded during the hearing that the plaintiffs had not proved that the audited financial statements of the first plaintiff's business were provided as part of the nomination application to the South Australian government agency. The plaintiffs' counsel submitted, however, that it was reasonable to infer that the audited financial statements would have been provided as part of that nomination application having regard to the nature of the nomination and the criteria to be satisfied.

24 No such inference can be drawn. The electronic record of the nomination form is in evidence. That record includes a section "Document attachments" which states that "All supporting documentation for the application must be uploaded within the online application form. Your supporting documentation must be scanned copies of the original documents. ... Documents provided in any other form, unless expressly requested, will not be accepted." Under the heading "Documents:" the record states "Passport - Main Applicant.pdf" and "Passport - Spouse.pdf".

25 The only reasonably available inference on this evidence is that the plaintiffs submitted to the South Australian government agency copies of the first

and second plaintiffs' passports by uploading scanned copies, but no other documents.

26 It follows that it cannot be inferred that the South Australian government agency satisfied itself that the first plaintiff would meet the primary criteria in Subdiv 132.225 by reviewing the audited financial statements of the first plaintiff's business or that such satisfaction underlay that State government agency's nomination of the first plaintiff for an invitation by the Minister to make the application for the Subclass 132 visa.

27 Even if that had been the case, the record of the nomination form also states, for example, that "If your application for nomination is successful, you must also meet all visa criteria set by the Department of Home Affairs ...". Accordingly, it also cannot be inferred that the delegate, in assessing the plaintiffs' application for the Subclass 132 visa, knew or assumed either that the South Australian government agency had satisfied itself that the first plaintiff would meet the primary criteria in Subdiv 132.225 by reviewing the audited financial statements of the first plaintiff's business or that such satisfaction underlay that agency's nomination of the first plaintiff for an invitation by the Minister to make the application for the Subclass 132 visa.

28 The impossibility of drawing any factual inference supportive of the claimed legal unreasonableness of the delegate not having requested the audited financial statements before refusing the Subclass 132 visa application is also reinforced by other Departmental documents.

29 The invitation from the Minister (via the Department) to the first plaintiff to apply for the Subclass 132 visa dated 20 April 2021 included this information:

"Being invited to apply for a visa does not guarantee that you will be able to make a valid visa application or that an application will be successful. Most skilled visas have requirements that must be satisfied at the date of invitation for a visa application to succeed.

...

If you proceed to lodge a visa application you must provide documentary evidence of the claims made in your EOI [expression of interest] as well as other supporting information. If information within your EOI is incorrect, any visa application you make may be unsuccessful.

...

Carefully review the visa and documentary requirements for a 132 (SBH) visa at <https://immi.homeaffairs.gov.au/vias/working-in-australia>

..."

9.

30 The Department's website, as referred to in the invitation, included statements as follows:

"Turnover

Provide evidence of total annual turnover of at least AUD3.0 million:

- in at least 1 business but no more than 2 businesses
- in at least 2 of the 4 fiscal years immediately before we invited you to apply

...

Send your documents

After you submit your application online, send us your documents and other forms.

...

... send your documents by **registered post** to:

Adelaide Visa and Citizenship Office

Attention: Adelaide Business Skills Processing Centre"

31 Under the heading "After you apply", the website also stated: "If you didn't send us all documents when you applied, send them as soon as you can".

32 The Department sent a letter of acknowledgement of the making of the Subclass 132 visa application to the plaintiffs' migration agent which said:

"Providing documents

We may make a decision on your application without requesting additional information. You should provide us with all the information you feel is relevant."

Consideration

Failure to inquire?

33 The plaintiffs relied on the principle recently described in *Ismail v Minister for Immigration* that the:¹⁰

"making of a decision, the decision-maker having failed to inquire about a relevant fact or matter, may involve jurisdictional error capable of characterisation as either a constructive failure to exercise jurisdiction or a legally unreasonable exercise of a particular duty or power. While decisions have expressed the criteria for an error of this kind as including that the potential fact was readily ascertainable and was critical or central to the decision, these criteria merely reflect the usually high threshold for a conclusion that a power has been unreasonably exercised as a matter of law."

34 As noted, the critical fact said to be subject to the requirement of inquiry was the provision of the audited financial statements. This was said to be because: (a) the visa application stated that the turnover figures were "based on audited financial statements"; (b) the plaintiffs' nomination by the agency of the Government of South Australia was effectively a "pre-vetting" or "pre-qualification" for the Subclass 132 visa and indicated that the plaintiffs would have had evidence to demonstrate they met the necessary visa criteria; (c) in circumstances where applications for Subclass 132 visas would lay dormant for several years, there was no point supplying the delegate with all of the information to satisfy the visa criteria at the time of application since it would have to be updated at the time of decision in any event; and (d) a "general practice" of the Department described above, had it been followed, would have resulted in copies of the audited financial statements being produced to the delegate.

35 It will be apparent that the plaintiffs' proposition (b) above is inconsistent with the factual findings made above. Proposition (c) above is also inconsistent with the fact that while the primary criteria had to be satisfied at the time a decision was made on the application, the audited financial statements had to relate to two

¹⁰ *Ismail v Minister for Immigration* (2024) 98 ALJR 196 at 202-203 [25]; 417 ALR 36 at 44, referring to *Minister for Immigration and Citizenship v SZIAI* (2009) 83 ALJR 1123 at 1129 [25]; 259 ALR 429 at 436; *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 at 289-290, 321; *Minister for Home Affairs v DUA16* (2020) 271 CLR 550 at 563-564 [26]-[27]; *Prasad v Minister for Immigration and Ethnic Affairs* (1985) 6 FCR 155 at 169; *Minister for Immigration and Border Protection v SZVFW* (2018) 264 CLR 541 at 551 [11], 564 [52], 575 [89], 586 [135]. See also *Wei v Minister for Immigration and Border Protection* (2015) 257 CLR 22 at 40-41 [51].

of the four fiscal years before the time of the invitation to apply for the visa. Otherwise, the plaintiffs' case is irreconcilable with the material available to the plaintiffs and their migration agent which made plain that it was for the plaintiffs to provide all information in support of their visa application.

36 The essence of the plaintiffs' case fails to recognise that a "requirement of legal reasonableness in the exercise of a decision-maker's power is derived by implication from the statute" and "whether the implied requirements of legal reasonableness have been satisfied requires a close focus upon the particular circumstances of exercise of the statutory power: the conclusion is drawn 'from the facts and from the matters falling for consideration in the exercise of the statutory power'".¹¹ Under the applicable legislative scheme constituted by, relevantly, ss 54, 55, 56 and 63 of the *Migration Act*, "[i]n the ordinary case ... what an applicant is entitled to by way of a hearing is a consideration of the written information provided in the application".¹² Further, the "high threshold" which has been said to apply before a conclusion of legal unreasonableness may be reached arising from a failure to inquire is to be applied in the context of this legislative scheme.¹³

37 The conclusion that a decision made was legally unreasonable, moreover, is drawn from the particular facts and matters for consideration in the exercise of that power, judged at the time that power was exercised.¹⁴ However, this is not a case in which the information said to be subject to the failure to inquire, if requested and provided, necessarily would have resulted in the grant of the Subclass 132 visa. The first plaintiff submitted no corroborative information at all in support of the visa application, one component only of which was the audited financial statements. If the first plaintiff had been requested to provide the audited financial statements and had done so (as it is accepted that the first plaintiff would have done had a request been made), it is not the case that the delegate would or could have decided to grant the visa application. Rather, the delegate would have had to either request other information to enable the delegate to consider whether the first plaintiff satisfied the other primary criteria or refused the application. If further information had been requested, whether the first plaintiff could and would

11 *Minister for Home Affairs v DUA16* (2020) 271 CLR 550 at 563 [26], quoting *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 at 367 [76].

12 *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 206 CLR 57 at 74 [49].

13 *Ismail v Minister for Immigration* (2024) 98 ALJR 196 at 203 [25]; 417 ALR 36 at 44; *Minister for Home Affairs v DUA16* (2020) 271 CLR 550 at 563 [26].

14 *Minister for Home Affairs v DUA16* (2020) 271 CLR 550 at 563 [26].

have provided such information to satisfy the other primary criteria remains unknown.

38 This factual context indicates three matters. First, it is difficult, if not impossible, to characterise the audited financial statements, of themselves and in isolation, as a matter critical to the decision or as the subject of an obvious inquiry before making the decision. Second, it is difficult, if not impossible, to characterise this case overall as out of the ordinary course in which an applicant for a visa has simply failed to provide any supporting information. Third, it is difficult, if not impossible, to characterise this case overall as one meeting the high threshold applicable to a claim of jurisdictional error by reason of a decision-maker's failure to make an obvious inquiry about a fact critical to the decision.

39 Nor is it apparent from either the statutory scheme or the factual context why the Department or delegate would not have been free to depart from any "general practice" such has been proved to exist, given the information available to the plaintiffs and their migration agent, the effect of which was that all supporting information should be provided to the Department at the time of or after the making of the application.

40 In short, from the information that was available and communicated to the plaintiffs and their migration agent before and after the visa application was submitted, it was clear that the plaintiffs were responsible for providing all relevant material to support the grant of the visa and that a decision could be taken by the decision-maker at any time. The plaintiffs could have submitted all supporting information, including the audited financial statements, at the time of application or at any time during the three years following its making before the delegate determined the application, but did not do so. The plaintiffs did not do so in the face of consistent Departmental information in writing that supporting evidence of the first plaintiff's claims was required.

41 To the extent the plaintiffs relied on a "general practice" not to do so until notified by a delegate that further information was required, as noted, there is no evidence that the plaintiffs or their migration agent believed that any "general practice" negated the consistent Departmental information in writing to the contrary or that the described "general practice" applied rather than the "preferred method" of lodging a visa application which was "decision ready".

42 In these circumstances, the decision of the delegate to refuse the plaintiffs' application for the Subclass 132 visa was nothing more than the ordinary working out of the statutory scheme and one which was in all the circumstances reasonable. This suffices to require the application for the constitutional writ to be dismissed.

Materiality

43 Further or alternatively, for jurisdictional error to be established it would be necessary for the plaintiffs to demonstrate that the delegate's failure to request the audited financial statements was material, in the sense that "there is a realistic possibility that the decision that was made in fact *could* have been different if the error had not occurred".¹⁵ This requirement is not "demanding or onerous",¹⁶ but its focus is the "decision made in fact", not the reasons for the decision.

44 The decision made in fact in this case was to refuse the application for the Subclass 132 visa. Although the delegate refused the application for the Subclass 132 visa because there was no information to support a finding that the primary criteria in Subdiv 132.225 (the turnover criteria) was satisfied, the plaintiffs have not proved that the delegate's decision in fact could have been different at the time the decision was made. This is because the plaintiffs have not provided any evidence capable of supporting an inference that, at the time of the decision, the first plaintiff would have satisfied the other primary criteria in Subdivs 132.21 and 132.22 as applicable.

45 The point is this. A plaintiff does not establish that any error was material to a decision to refuse the grant of a visa merely by proving that they could and would have satisfied one criterion for the making of a decision in the plaintiff's favour if, to obtain a favourable decision, there were other criteria the plaintiff also had to satisfy. The question whether a decision in fact *could* have been different cannot be based on mere speculation.¹⁷ The required exercise is "wholly backward-looking" to be performed "by reference to the decision that was made and, depending on the nature of the error, how that decision was made. Those are facts in respect of which the applicant for judicial review bears the onus of proof on the balance of probabilities."¹⁸

46 The decision that was made being refusal of the application for the Subclass 132 visa, the plaintiffs had to prove that the decision, at the time it was made, *could* have been the grant of the Subclass 132 visa. That the plaintiffs have

15 *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 98 ALJR 610 at 614 [7]; 418 ALR 152 at 155 (emphasis in original).

16 *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 98 ALJR 610 at 615 [14]; 418 ALR 152 at 157.

17 *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 98 ALJR 610 at 619 [36]; 418 ALR 152 at 161.

18 *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 98 ALJR 610 at 615 [10]; 418 ALR 152 at 156.

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not proved because no information was provided in support of the application for the Subclass 132 visa at all and it remains unknown whether the first plaintiff *could* have satisfied the other primary criteria at the time the decision was made.

Conclusion and orders

47 For these reasons, the decision of the delegate to refuse each of the plaintiffs a visa is not vitiated by jurisdictional error. The plaintiffs' application must be dismissed. The plaintiffs should pay the defendant's costs.