HIGH COURT OF AUSTRALIA

STEWARD J

QUANG SAU LE PLAINTIFF

AND

MINISTER FOR IMMIGRATION AND CITIZENSHIP DEFENDANT

[2025] HCASJ 33
Date of Judgment: 17 September 2025
S71 of 2025

ORDERS

1. *Pursuant to s 486A(2) of the Migration Act 1958 (Cth), the period of time within which the plaintiff's application may be made is extended to 10 June 2025.*

2. *Pursuant to r 4.02 of the High Court Rules 2004 (Cth), the periods of time within which to file the plaintiff's application, fixed by rr 25.02.1 and 25.02.2(b), are enlarged to 10 June 2025.*

3. *The plaintiff's application for a constitutional or other writ filed on 10 June 2025 is dismissed.*

4. *The plaintiff is to pay the defendant's costs of and incidental to the application.*

Representation

The plaintiff is represented by Wickham Lawyers

The defendant is represented by Sparke Helmore Lawyers

1 STEWARD J. By an application for a constitutional or other writ, the plaintiff (Mr Quang Sau Le) seeks judicial review of a decision of a delegate of the defendant (the Minister for Immigration and Citizenship). The plaintiff also seeks an extension of time within which to make that application.

2 For the following reasons, the extension of time is granted but the application is dismissed.

Background

3 The plaintiff is a Vietnamese citizen, who seeks a Business Talent (Subclass 132) (Permanent) visa in the Significant Business History stream (the "Visa"), being one of several Australian business skills visas.[1] The Explanatory Statement to the regulations which created that visa stream explains that it "applies to applicants who have had a successful business career and are proposing to establish or participate in a business that the sponsoring State or Territory has determined is of exceptional economic benefit to the State or Territory".[2] The relevant history in respect of the plaintiff's efforts to obtain the Visa may be broadly summarised as follows.

4 On 24 March 2020, the plaintiff lodged an expression of interest for a Visa. Later that year, on 16 September 2020, the plaintiff lodged a nomination application with the Government of South Australia (it was a requirement for the grant of the Visa that the plaintiff be nominated by a State or Territory government agency).[3]

5 On 17 September 2020, the plaintiff received confirmation from the Government of South Australia that his nomination application had been approved, and that the plaintiff would shortly receive an invitation from the Department of Home Affairs (the "Department") to apply for the Visa (it was a requirement for the grant of the Visa that the plaintiff be invited in writing by the Minister to apply for the Visa).[4] Later that same day, the plaintiff received that invitation from the Department, which specified that his application for the Visa must be lodged on or before 16 November 2020.

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1 This subclass of Australian visa was permanently closed to new applicants in July 2024. However, the plaintiff's application was nevertheless processed on the basis that it was lodged prior to that date (see below).

2 Explanatory Statement, *Migration Amendment Regulation 2012 (No 2)* (Cth) at 48.

3 *Migration Regulations 1994* (Cth), Sch 2, cl 132.212.

4 *Migration Regulations 1994* (Cth), Sch 2, 132.221.

6 On 14 November 2020, the plaintiff lodged an application for the Visa (the "Visa Application"). The Visa Application included the plaintiff's three children as secondary applicants. Later, on 28 October 2022, the plaintiff notified the Department of Home Affairs of his marriage to his new wife (in February 2021) and the birth of their new child (on 24 June 2021). The plaintiff's notification confirmed that neither the plaintiff's new wife nor new child intended to migrate to Australia with the plaintiff and his other three children.

7 On 13 November 2024, the plaintiff lodged a "Statement of Business Intention for South Australia" (which was dated 15 November 2020) in support of his Visa Application (the "Business Plan"). That Business Plan outlined the agricultural export business – Sunshine SA Pty Ltd ("Sunshine") – which he asserted he intended to carry on in Australia in the event the Visa was granted. In short, the plaintiff therein asserted that "[t]he focus of [Sunshine] will be on the export of South Australia meats, grains, honey and natural products such as nutrition foods from South Australia to Vietnam (and other Southeast Asian countries)" and that "[Sunshine] will be developed to meet the growing demand for Australian agriproducts by the Asian demographic".

8 On 23 December 2024, the plaintiff received notification from the Department of Home Affairs that his Visa Application had been refused by a delegate of the Minister (the "Delegate's Decision"). That notification also specified that the plaintiff had no right to merits review of the Delegate's Decision. The Delegate's Decision is outlined in greater detail below (at [11]-[15]).

9 On 26 January 2025, the plaintiff filed an application for judicial review of the Delegate's Decision in the Federal Circuit and Family Court of Australia (the "Previous Judicial Review Application"), which was listed for hearing on 9 June 2025. On 2 June 2025, the plaintiff was served by the Minister with written submissions in that proceeding, which referred to this Court's unreported decisions in *Gajjar v Minister for Immigration and Citizenship*[5] and *Nguyen v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs*[6] – in support of a submission that the Federal Circuit and Family Court lacked jurisdiction to determine the Previous Judicial Review Application (prior to receipt of those unreported decisions, the plaintiff believed that the Federal Circuit and Family Court had jurisdiction on the basis that he had no rights of merits review in the Administrative Review Tribunal). As a result, on 4 June 2025, the plaintiff discontinued the Previous Judicial Review Application.

10 Shortly thereafter, on 10 June 2025, the applicant filed the present application in this Court seeking judicial review of the Delegate's Decision (the

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5 Unreported (B37/2012), 1 November 2012 per Kiefel J.

6 Unreported (C1/2022), 22 July 2022 per Steward J.

"Present Application"). The Minister accepts that this Court has jurisdiction to determine the Present Application and that it should not be remitted to another court.

The Delegate's Decision

11 The Delegate's Decision (to refuse the Plaintiff's Visa Application) was expressed in the "Decision Record" to be made on the basis of a finding that "the criteria for the grant of a [Visa] are not satisfied". Specifically, the delegate indicated that in this case, he was not satisfied that cl 132.227 of Sch 2 of the *Migration Regulations 1994* (Cth) were satisfied.[7]

12 Clause 132.227 relevantly prescribed the following criteria for the grant of the Visa:

> "(1) The applicant genuinely has a realistic commitment to:
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> (a) establish a qualifying business[8] in Australia; or
>
> (b) participate in an existing qualifying business in Australia.
>
> (2) The applicant genuinely has a realistic commitment to:
>
> (a) maintain a substantial ownership interest in the qualifying business mentioned in subclause (1); and
>
> (b) maintain a direct and continuous involvement in the management of the qualifying business from day to day, and in the making of decisions that affect the overall direction and performance of the qualifying business, in a manner that benefits the Australian economy."

13 In that respect, the delegate noted that the applicant was currently "a 100 percent owner of ... Quang Sau One Member Company Limited", being a "Vietnam-based timber trading business, which focusses mainly on the processing and trading of timber /or wood products since the business was established in

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7 Both the plaintiff and Minister accept that cl 132.227 prescribed criteria which needed to be met for the Visa to be granted. See *Migration Act 1958* (Cth), s 31(3); *Migration Regulations 1994* (Cth), reg 2.03.

8 A "qualifying business" is defined by reg 1.03 of the *Migration Regulations 1994* (Cth) to mean "an enterprise that: (a) is operated for the purpose of making profit through the provision of goods, services or goods and services (other than the provision of rental property) to the public; and (b) is not operated primarily or substantially for the purpose of speculative or passive investment".

February 2017". He went on to observe that the only supporting documents relevant to cl 132.227 which the plaintiff submitted were: (i) online "yes" responses to the business talent declarations contained in his Visa Application; and (ii) the Business Plan, which the delegate acknowledged was "approved by the Government of South Australia" but which he described as:

> "[A] short business plan with little detail ... [which] stated the applicant's intentions to inject approximately AUD 1 million into a new Adelaide-based agricultural produce export business dealing in meats, grains, honey, and natural products. The business is forecast to potentially achieve a turnover of at least AUD 800,000 within the first 2 years and then generate annual turnover of AUD 1 million from the 5th year onward."

14 The delegate then went on to refer to what he described as the policy "objectives of the Business Skills program", the "context" for which he said was provided in the "Department's GenGuideM – Business Skills visas – Visa application and related procedures" (the "Policy"). That Policy is therein described as being the "Procedural Instruction" which relevantly "provides policy and procedure for deciding ... Business Skills program visa applications made on or after 1 July 2003". In his reasons, the delegate outlined the "objectives of the Business Skills program" with reference to several quotations extracted from that Policy.

15 Thereafter, the delegate set out the following reasons explaining why he was not satisfied that the criteria in cl 132.227 were met:

> "In the case of the applicant's proposed business activity in Australia (as per paragraph 132.227(1)(a) requirements), I acknowledge the applicant's intentions are to establish an agricultural product export business in South Australia. However, for the reasons outlined below, I am not satisfied the applicant satisfies paragraph 132.227(1)(a) and paragraph 132.227(2)(a) and (b):
>
> • There is no evidence on file to suggest the applicant holds specialised skills in the food and agriculture export business industry.
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> • There is no evidence on file to suggest the applicant's proposed business activity will substitute existing services in Australia, or introduce any new or improved technology, product, or service in a key sector such as new medical technology or renewables energy /or materials.
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> • The applicant's business plan does not address legal requirements, regulations, mandatory industry codes & standards, insurance with regard to the exporting and wholesale trading industry and understanding of trading laws, licencing/or permits requirements.

• The applicant's business plan does not address details regarding employment opportunities for Australian citizens, Australian permanent residents or holders of a valid New Zealand passport, or if the positions will offer competitive wages.

• There is no evidence that the proposed business holds successful patents that would introduce new products or processes to the Australian market nor does it involve innovation activities, such as sourcing venture capital funding towards product development or manufacturing.

I accept that the establishment of an agricultural export business may provide some benefit to Australian agriculture and some employment opportunities; however, there is no evidence before me to suggest such a business proposal will deliver any of the other expected outcomes of the Business program listed above.

As a result, I am not satisfied the applicant's intentions to establish an agricultural export business in Australia are genuine, realistic or commensurate to the expected outcomes of the Business Skills program, or will offer any significant benefit to the Australian economy. Therefore, paragraph 132.227(1)(a) , 132.227(2)(a) and 132.227(2)(b) are not met by the applicant.

I have also given consideration to paragraph 132.227(1)(b) which enables an applicant to participate in an existing Australian business, rather than establishing one on their own. In the case of the applicant, there is no material evidence before the Department to support the possibility the applicant could become involved in an already operating Australian business. Therefore, paragraph 132.227(1)(b) is not met by the applicant.

As paragraphs 132.227(1)(a) and paragraph 132.227(1)(b) have not been satisfied, subclause 132.227(1) is not met by the applicant. As subclauses 132.227(1) and (2) are not satisfied, clause 132.227 is not met."

The Present Application

16 By the Present Application, the plaintiff seeks orders in the following terms:

"1. An extension of the time for making this application to 6 June 2025 pursuant to the Migration Act 1958 (Cth) (‘the Act’) s 486A(2) and the High Court Rules 2004 rule 4.02.

2. A writ of certiorari to quash the decision of the delegate of the defendant dated 23 December 2024.

3. A writ of mandamus directed to the defendant, requiring the defendant to determine the application made by the plaintiff on

14 November 2020, for a Business Skills – Business Talent (Migrant) (Class EA) (Subclass 132) visa according to law.

4. The defendant pay the plaintiff's costs of and incidental to the Application.

5. Such other Order(s) as this Honourable Court deems fit."

17 The grounds of the Present Application are expressed in the following terms:

"The defendant's delegate failed to address the correct statutory question.

a. The statutory question raised by Clause 132.227 of Schedule 2 to the *Migration Regulations 1994* (Cth) ('the Regulations') required the delegate to be satisfied that the applicant genuinely has a realistic commitment to establish a qualifying business in Australia, to maintain a substantial ownership interest in that business, and to maintain a direct and continuous involvement in the management of that business from day-to-day, and in making decisions that affect the overall direction and performance of that business in a manner that benefits the Australian economy.

b. The delegate found that this Clause was not met as the applicant had not satisfied the delegate that he genuinely or realistically intended to establish a business that was commensurate to the expected outcomes of the Business Skills program, or will offer any significant benefit to the Australian economy.

c. The statutory question does not require the delegate to be satisfied that the business activity was commensurate to the expected outcomes of the Business Skills program or will offer significant benefit to the Australian economy.

d. By misconstruing the statutory question and failing to answer it, the decision was affected by jurisdictional error."

Consideration – extension of time

18 The plaintiff acknowledges that the Present Application was filed outside the time limits prescribed by s 486A(1) of the *Migration Act 1958* (Cth) (the "*Migration Act*") and rr 25.02.1 and 25.02.2(b) of the *High Court Rules 2004* (Cth) (the "*Rules*"). He seeks an extension of those time limits pursuant to s 468A(2) of the *Migration Act* and r 4.02 of the *Rules*.

19 The Minister does not oppose the grant of the extension of time. Accordingly, and also having regard to the fact that (as explained above) the

plaintiff acted promptly to file the Present Application after the unreported decisions of this Court in *Gajjar* and *Nguyen* were provided to him, I am satisfied that the extension of time is in the interests of the administration of justice. I grant the extension of time.

Consideration – jurisdictional error

20 The plaintiff contends that the Delegate's Decision was infected by jurisdictional error. The error in question is said to be a misconstruction of the governing criteria to the Visa prescribed by cl 132.227 (the plaintiff does not otherwise take issue with any other aspect of the Delegate's Decision).

21 In particular, the plaintiff takes issue with the part of the delegate's reasons in which he concluded that he was "not satisfied the applicant's intentions to establish an agricultural export business in Australia are genuine, realistic *or commensurate to the expected outcomes of the Business Skills program, or will offer any significant benefit to the Australian economy*".[9] The plaintiff submits that this passage, coupled with a reading of the delegate's reasons "as a whole", illustrates that "what the delegate has done is to assess whether the applicant had a genuine and realistic intention of establishing a business that met *the expected outcomes of the Business Skills program, or will offer any significant benefit to the Australian economy*",[10] which is "not the question that [cl 132.277] required to be met". In doing so, the plaintiff submits that "[t]he delegate has substituted the policy for the statutory test in a manner that is more restrictive than the statutory test". This is said to constitute jurisdictional error given that, as French, Sackville and Hely JJ said in *Lobo v Minister for Immigration and Multicultural and Indigenous Affairs*:[11]

> "Where the Minister misconstrues one of the criteria prescribed in the Act or Regulations and, because of that misconstruction he considers that the criterion has not been satisfied, it is as though he did not consider the criterion at all. For, on the face of it, he has failed to ask the question which the Act and Regulations, upon a proper construction of the criterion, require him to ask. In such a case ... the Minister's decision would be a nullity. The Minister has not done that which the Act requires him to have done. The decision would be a purported decision of no legal effect."

22 I am not satisfied that the delegate fell into such jurisdictional error. Two propositions (addressed in further detail below) compel that conclusion. First, on

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9 Emphasis added to the Delegate's Decision.

10 Emphasis in the plaintiff's written submissions.

11 (2003) 132 FCR 93 at 106 [43].

a fair reading of the delegate's reasons as a whole, he did not err in the manner which the plaintiff contends. Second, in any event, even if he did so err, that error was not material.

(1) The delegate did not misconstrue the criteria in cl 132.227

23 It is well-established that a reviewing court is required to give the administrative decision-maker "beneficial construction" of their reasons, in the sense that the court should not be "concerned with looseness in the language ... nor with unhappy phrasing" by the decision-maker, and that their reasons under review "are not to be construed minutely and finely with an eye keenly attuned to the perception of error".[12] Such principles "recognise the reality that the reasons of an administrative decision-maker are meant to inform and not to be scrutinised upon over-zealous judicial review by seeking to discern whether some inadequacy may be gleaned from the way in which the reasons are expressed".[13] Here the plaintiff contends that the delegate applied an erroneously restrictive test (derived from the Policy). However, as Emmett J recognised in *Selliah v Minister for Immigration and Multicultural Affairs*, the "Court should not assume that a [decision-maker] did not apply the correct test unless that appears clearly from the [decision-maker's] reasons".[14]

24 Here, it is readily apparent that the delegate had regard to the relevant Policy in the determination of the plaintiff's Visa Application. But importantly, having regard to the Policy (in interpreting and applying the cl 132.227 criteria) is not, of itself, objectionable. As French CJ, Bell, Keane and Gordon JJ recognised in *Plaintiff M64/2015 v Minister for Immigration and Border Protection*:[15]

> "Policy guidelines ... promote values of consistency and rationality in decision-making, and the principle that administrative decision-makers should treat like cases alike. In particular, policies or guidelines may help to promote consistency in 'high volume decision-making' ... Thus in *Drake v Minister for Immigration and Ethnic Affairs (No 2)*, Brennan J, as President of the Administrative Appeals Tribunal, said that '[n]ot only is it lawful for the Minister to form a guiding policy; its promulgation is

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12 *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 271-272.

13 *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 272.

14 [1999] FCA 615 at [39].

15 (2015) 258 CLR 173 at 194 [54], quoting *Drake v Minister for Immigration and Ethnic Affairs [No 2]* (1979) 2 ALD 634 at 640-642 (citations omitted).

> desirable' because the adoption of a guiding policy serves, among other things, to assure the integrity of administrative decision-making by 'diminishing the importance of individual predilection' and 'the inconsistencies which might otherwise appear in a series of decisions'. The subjectivity of the evaluation by a decision-maker in a case such as the present highlights the importance of guidelines. The importance of avoiding individual predilection and inconsistency in making choices between a large number of generally qualified candidates by the application of [an] open-textured criterion ... is readily apparent."

25 The delegate's consideration of the Policy would only here be erroneous if he, in effect, substituted the criteria in cl 132.227 with requirements specified by the Policy – with the effect that the plaintiff had to overcome additional or more restrictive criteria to obtain the Visa.[16] Applying the necessary lens of "beneficial construction" and taking the delegate's reasons as a whole, it cannot be accepted that the delegate substituted or otherwise misconstrued what was required by cl 132.227 in that manner. In that respect, I note the following matters.

26 The delegate's reasons began with a clear statement that the Visa "cannot be granted unless the relevant criteria specified in the Act and the Regulation are satisfied" and that, in this case, he was "not satisfied that clause 132.227 ... is satisfied", immediately followed by setting out the text of cl 132.227 in full. This illustrates a clear understanding by the delegate that the applicable criteria come from cl 132.227 (as opposed to from the Policy alone). Indeed, the delegate explicitly said that not being satisfied that the cl 132.227 criteria were met was what drove his decision to refuse the Visa.

27 The better view is that, as the Minister submits – rather than "substitut[ing]" cl 132.227 with the Policy, the delegate instead had regard to the Policy in interpreting the part of the criteria in cl 132.227(2)(b) requiring the plaintiff's proposed business to be run "in a manner that benefits the Australian economy". This finds support in the Policy at 3.10.3.7, which stated that: "[u]nder policy, for the [benefits the Australian economy] criterion to be satisfied, the applicant should satisfy the decision-maker that the proposed business activity will reflect the expected outcomes of the Business programs", which is immediately followed by a non-exhaustive list of such outcomes. This broadly aligns with language in the delegate's reasons that "there is no evidence before me to suggest such a business proposal will deliver any of the other expected outcomes of the Business program" and that the proposed business activity was not "commensurate to the expected outcomes of the Business Skills program" nor would it "offer any significant benefit to the Australian economy".

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16 See, for example, *Lobo v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 132 FCR 93 at 112-113 [63]-[65].

28 Whether a proposed business will be run "in a manner that benefits the Australian economy" is plainly a broad "open-textured criterion" of the kind discussed in *Plaintiff M64/2015*, which benefits from policy guidelines to "promote values of consistency and rationality in decision-making".[17] As the Minister submits, this was "an evaluative question on which reasonable minds could differ and it made sense for the Policy to seek that decision-makers consider that issue through the prism of the scope, purpose and policy of the relevant visa scheme which the Business Talent visa fell within". It is far from clear that the delegate having regard to the Policy in this way (ie, to give colour to the criterion) has, in fact, resulted in the application of a test which is "more restrictive" than required.

29 In that respect, it is worth observing that the delegate did conclude that the plaintiff's proposed business "may provide *some* benefit to Australian agriculture and *some* employment opportunities" but that "there is no evidence ... to suggest [it] will deliver any of the other expected outcomes of the Business program" and further that he was "not satisfied ... [it] will offer any *significant* benefit to the Australian economy".[18] Notably, the text of cl 132.227(2)(b) does not expressly provide that the benefit to the Australian economy must be "significant". But nevertheless, it is clear from the foregoing that the delegate took the view that *any* benefit to the Australian economy (no matter how small) would not, of itself, satisfy the cl 132.227(2)(b) criteria. With respect, that view is correct. This does not emerge from the Policy (which does not express a requirement that the economic benefit must be "significant"), but rather as a matter of orthodox statutory construction. Virtually any proposed business – no matter how small, unsuccessful or poorly managed – might be of *some* benefit to the economy, in the sense of resulting in some kind of economic activity by way of producing, buying or selling products or services. It would be an "absurd consequence[]"[19] if *any* economic benefit (and by extension virtually any proposed business) met the cl 132.227(2)(b) criteria, because that would render the criteria effectively meaningless. That is particularly so recalling that, as noted above, the relevant Explanatory Statement stated that this visa stream applied in respect of proposed businesses that had been determined to be "of *exceptional* economic benefit to the State or Territory".[20]

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17 (2015) 258 CLR 173 at 194 [54].

18 Emphasis added.

19 See generally *Prentice v Nugan Packing Co Ltd* (1950) 81 CLR 558 at 564-565; *Commissioner of Taxation (Cth) v Barton* (1957) 96 CLR 359 at 368.

20 Explanatory Statement, *Migration Amendment Regulation 2012 (No 2)* (Cth) at 48 (emphasis added).

30 It follows that there is no error apparent in the delegate's construction of cl 132.227.

(2) Any error was not material

31 In most cases, including with respect to the error the plaintiff contends infected the Delegate's Decision, "an error will only be jurisdictional if the error was material to the decision that was made in fact, 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".[21] Curial relief is only justified if that "threshold of materiality" has been met.[22]

32 Here, even if the delegate erred – in the sense that he erroneously imported into cl 132.227 an additional requirement that the business activity proposed must be "commensurate to the expected outcomes of the Business Skills program" or will "offer any significant benefit to the Australian economy" – that error could not have changed the decision made. Accordingly, even if the delegate erred, this did not give rise to jurisdictional error.

33 That is so because cl 132.227 contained multiple separate and distinct criteria, *all* of which needed to be satisfied for the Visa to be granted. For present purposes, the Minister broadly characterises these as two separate requirements for the plaintiff to genuinely have a realistic commitment to both: (i) establishing and maintaining a substantial ownership interest in the qualifying business in Australia (the "business establishment/maintenance requirement", which falls from sub-cl (1)(a) and (2)(a));[23] and (ii) operating the proposed business in a particular manner, directed to achieving benefits for the Australian economy (the "business operations/benefits requirement", which falls from sub-cl (2)(b)). The delegate's reasons reveal that he was not satisfied that either requirement was met, whereas the error alleged is directed solely to the threshold called for by the so-called business operations/benefits requirement. Put another way, even if the delegate

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21 *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321 at 327 [7] (emphasis in original).

22 *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321 at 329 [16].

23 For completeness, as noted above, in lieu of "establish[ing] a qualifying business in Australia", it was also open to the plaintiff to instead "participate in an existing qualifying business in Australia" pursuant to cl 132.227(1)(b). This is of no consequence in the present matter; the plaintiff's Business Plan was directed solely to the establishment of his own qualifying business. As the delegate observed: "there is no material evidence ... to support the possibility the applicant could become involved in an already operating Australian business".

erroneously imported additional requisites into the business operations/benefits requirement – in any event, he was not satisfied that the plaintiff satisfied the business establishment/maintenance requirement, which is itself a freestanding and complete reason for which the Visa Application must be refused. As the Minister correctly submits in respect of the Present Application: "unless it could somehow be established that the delegate's reasoning/decision concerning [the business operations/benefits requirement] infected his reasoning/decision concerning the business establish[ment]/maintenance requirement ... the result of the case would inevitably have remained unchanged".

34 While the plaintiff accepts the Minister's characterisation of those two requirements, he submits that "the reasoning on both aspects is expressly merged" and therefore "[t]he delegate regard[ed] the [erroneously imported requisites] as applying to both [the business establishment/maintenance requirement] and [the business operations/benefits requirement]". With respect, that submission mischaracterises the Delegate's Decision. While it is true that the delegate's reasoning is "merged" – in the sense that (as outlined above) the delegate set out a bullet list of factors directed to both requirements – this falls well short of indicating that the delegate considered that the erroneously imported requisites applied to the business establishment/maintenance requirement. This is clear when one adopts the appropriate "beneficial construction" of the delegate's reasons – particularly having regard to the following:

(a) As noted above, the delegate set out the cl 132.227 criteria in full in his reasons. The business establishment/maintenance requirement in sub-cl (1)(a) and (2)(a) is relatively basic and straightforward, and there is no basis for inferring that the delegate did not read and understand it.

(b) In the key conclusionary passage (with which the plaintiff takes issue), the delegate outlined each of the distinct bases on which he was not satisfied that the cl 132.227 criteria were met, each of which were separated by the word: "or". He relevantly said that he was not "satisfied the applicant's intentions to establish an agricultural export business in Australia are genuine, realistic *or*",[24] before going on to advert to the other matters. It is apparent from this that the delegate correctly understood that failure to meet the business establishment/maintenance requirement was a distinct and freestanding reason for which the Visa Application must be refused.

(c) The delegate demonstrated a clear understanding of the Policy, which itself draws a distinction between the different criteria in cl 132.227. This renders it further improbable that any error (derived from the Policy) in the delegate's approach to the business operations/benefits requirement infected

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24 Emphasis added.

his approach to the business establishment/maintenance requirement. In particular, for example:

(i) the Policy at 3.10.3.3 clearly outlined the applicable criteria as being distinct and separate, in the following terms:

"The applicant satisfying the primary criteria is required to demonstrate that:

- they plan to establish and maintain a substantial ownership interest in a business in Australia ...
- they plan to maintain direct and continuous involvement in the management of the business in Australia ...
- the intended business will be of economic benefit to Australia ...
- their business or investment intentions are genuine and realistic ..."; and

(ii) whereas the Policy at 3.10.3.7 addressed how the "benefit to Australia" criterion would be satisfied (see above at [27]), the Policy at 3.10.3.8 *separately* outlined the factors to which regard should be had "[i]n assessing whether the applicant's (realistic) commitment to establishing (or participating in) and maintaining involvement in a business or investment in Australia is genuine".

(d) The delegate expressly made multiple findings which, in any event, would tend to lead a rational decision-maker to doubt whether the plaintiff genuinely had a realistic commitment to establishing and maintaining a substantial ownership interest in the proposed agriculture export business, including that:

(i) the plaintiff had submitted limited evidence concerning his proposed business, save largely only for his Business Plan, which was "a short business plan with little detail";

(ii) "[t]here is no evidence on file to suggest the applicant holds specialised skills in the food and agriculture export business industry"; and

(iii) "[t]he applicant's business plan does not address legal requirements, regulations, mandatory industry codes & standards, insurance with regard to the exporting and wholesale trading industry and understanding of trading laws, licencing/or permits requirements".

Disposition

35 For the foregoing reasons, the Present Application is dismissed with costs – and, pursuant to r 25.09.1 of the Rules, without oral hearing.