HIGH COURT OF AUSTRALIA

GORDON, GLEESON AND BEECH-JONES JJ

SANJEEV KANYAN PLAINTIFF

AND

MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS & ORS DEFENDANTS

Kanyan v Minister for Immigration and Multicultural Affairs
[2025] HCA 52
Date of Judgment: 10 December 2025
S63/2025

ORDER

Application for a constitutional or other writ dismissed with costs.

Representation

The plaintiff is represented by Residency Legal

The first defendant is represented by Mills Oakley

Submitting appearances for the second, third and fourth defendants

CATCHWORDS

Kanyan v Minister for Immigration and Multicultural Affairs

Administrative law – Judicial review – Jurisdictional error – Where application for student visa refused on basis that plaintiff not genuine applicant for entry and stay as student – Where plaintiff informed Tribunal he did not have current Confirmation of Enrolment in registered course of study – Where plaintiff consented to decision being made without hearing – Where Tribunal affirmed refusal decision on basis that plaintiff not enrolled in registered course of study – Where Federal Circuit Court of Australia refused application for judicial review – Whether decision by Federal Court of Australia to refuse extension of time and leave to appeal involved jurisdictional error – Whether abuse of process to contend Tribunal fell into jurisdictional error.

Words and phrases – "abuse of process", "certiorari", "consent", "jurisdictional error", "mandamus", "prospect of success", "reasonably impressionistic level", "registered course of study", "student visa".

Federal Court of Australia Act 1976 (Cth), ss 24, 25, 33.
Migration Act 1958 (Cth), ss 359, 359C, 360.
Federal Circuit Court Rules 2001 (Cth), r 44.12.
High Court Rules 2004 (Cth), r 25.09.3.
Migration Regulations 1994 (Cth), r 1.03, Sch 2 cll 500.111, 500.211, 500.212.

1 GORDON, GLEESON AND BEECH-JONES JJ. The plaintiff seeks, by his application for a constitutional or other writ, a writ of certiorari quashing the orders of the second defendant, the Federal Court of Australia (Abraham J), and a writ of mandamus compelling the "defendant"[1] to determine the plaintiff's application according to law.[2] Each of the second defendant, the third defendant (the Administrative Appeals Tribunal, now the Administrative Review Tribunal) and the fourth defendant (the Federal Circuit Court of Australia, now the Federal Circuit and Family Court of Australia (Division 2)) filed a submitting appearance. On 29 October 2025, the application was referred by Gordon J for determination by a Full Court.[3] The parties consented to the application being determined on the papers.

2 For the reasons that follow, the plaintiff's application for a constitutional or other writ should be dismissed.

Background

3 The plaintiff is a citizen of India who arrived in Australia on 1 December 2014 as the holder of a student visa. On 15 August 2017, he applied for a further student visa. That application was refused by a delegate of the first defendant, the Minister for Immigration and Multicultural Affairs, on the basis that the plaintiff was not "a genuine applicant for entry and stay as a student", as required by cl 500.212 of Sch 2 to the *Migration Regulations 1994* (Cth).

4 On 6 October 2017, the plaintiff applied to the then Administrative Appeals Tribunal for review of the delegate's decision, having appointed a registered migration agent as his representative. On 5 April 2019, the plaintiff was invited, pursuant to s 359(2) of the *Migration Act 1958* (Cth), to provide information in writing about the course of study he was intending to undertake and to complete a Request for Student Visa Information form. He was notified that it was a requirement for the grant of the student visa that he be enrolled in a registered course of study and be a genuine applicant for entry and stay as a student.

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1 Assumed to be the second defendant.

2 Abraham J was exercising the appellate jurisdiction of the Federal Court, as a single Judge, in determining an application for leave to appeal to that Court: see *Federal Court of Australia Act 1976* (Cth), s 25(2)(a). Consequently, no appeal could be brought to this Court from the judgment of Abraham J: s 33(4B)(a).

3 Pursuant to *High Court Rules 2004* (Cth), r 25.09.3(d).

5 On 7 May 2019, the plaintiff provided the completed form to the Tribunal. In response to the question, "Does the [plaintiff] have a current Confirmation of Enrolment (CoE) in a registered course of study?", the plaintiff answered "No". Under that answer, the form stated that "[n]ot being enrolled in a registered course of study may be a reason, or a part of the reason, for the Tribunal affirming the decision under review".

6 In response to the question, "Do you ... consent to the Tribunal deciding the review without a hearing?", the plaintiff responded that he consented to the Tribunal deciding the review without a hearing. Immediately below that question, the form stated:

> "Note: If you consent to us deciding your review without a hearing:
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> - You will not be invited to appear at a hearing to give evidence and present arguments relating to the issues in your case. Our decision will be made based on the information and evidence before us, and *we may consider criteria or issues that were not previously considered by the primary decision maker*.
>
> - We may either affirm or set aside the decision under review. Please see our Information about Decisions fact sheet for more information about different types of decisions and what happens once our decision has been made.
>
> - You should provide us with all the information you would like us to consider in your case. A decision will not be made until after the period for responding." (emphasis in original)

7 On 25 July 2019, the Tribunal affirmed the delegate's decision on the basis that the plaintiff was not enrolled in a registered course of study as required by cl 500.211 of Sch 2 to the *Migration Regulations*.[4]

8 The plaintiff sought judicial review of the Tribunal's decision in the then Federal Circuit Court of Australia ("the Circuit Court"). That review application was based, in substance, on the fact that the plaintiff had not been invited to comment on the information he provided in his s 359(2) response and the fact that

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4 Clause 500.211(a), the only criterion relevant to this proceeding, requires that the applicant be "enrolled in a course of study", which is relevantly defined to mean "a full-time registered course": *Migration Regulations*, cl 500.111 para (d) of the definition of "course of study", and see *Migration Regulations*, r 1.03 definition of "registered course".

he had not been invited to attend a hearing before the Tribunal. That application was heard on 5 May 2021. The Circuit Court (Judge Street) was not satisfied that the grounds in the plaintiff's review application raised an arguable case and dismissed the application pursuant to r 44.12(1)(a) of the then *Federal Circuit Court Rules 2001* (Cth).[5] The Circuit Court dismissed the application for three reasons.[6] First, the Tribunal was not required to invite the plaintiff to attend a hearing in circumstances where the plaintiff had consented to the Tribunal deciding the application without a hearing. Second, the Tribunal's obligations under s 359A(1) of the *Migration Act*[7] were not enlivened by the information provided by the plaintiff in response to the s 359(2) invitation to provide information. Third, the plaintiff was on notice of the dispositive issue on review, as the Tribunal had requested evidence of his enrolment in a registered course.

9 As dismissal of the review application by the Circuit Court under r 44.12(1)(a) of the *Federal Circuit Court Rules* was interlocutory in nature,[8] the plaintiff required leave to appeal to the Federal Court.[9] The plaintiff's application for leave to appeal to the Federal Court was filed two days outside the prescribed period and he therefore also required an extension of time.

10 On 27 March 2025, Abraham J dismissed the plaintiff's application for an extension of time and leave to appeal from the judgment of the Circuit Court.[10] Abraham J observed that, although the power to extend time in which to appeal

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5 *Kanyan v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2021] FCCA 931 at [6]-[7].

6 *Kanyan* [2021] FCCA 931 at [2(16)-(17), (20)-(22)]; *Kanyan v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2025] FCA 261 at [5].

7 Section 359A(1) sets out the Tribunal's obligations in respect of any information it considers would be the reason, or a part of the reason, for affirming the decision under review, including that the Tribunal must give the applicant clear particulars of that information, and invite the applicant to comment on or respond to it.

8 *Federal Circuit Court Rules*, r 44.12(2).

9 *Federal Court of Australia Act 1976* (Cth), s 24(1A).

10 *Kanyan* [2025] FCA 261.

and the power to grant leave to appeal are unfettered, the authorities identify several matters which may bear upon the exercise of those discretions.[11]

11 After describing the contents of the plaintiff's written submissions filed in the Federal Court, her Honour identified that the basis of the plaintiff's submissions before the Circuit Court and the Federal Court was that the Tribunal was required to invite him to comment on the information he had provided in his s 359(2) response that he was not enrolled in a registered course of study, and to invite him to a hearing, despite him having consented to the Tribunal making a decision without doing so.[12] Her Honour observed that there was nothing in the materials or the evidence before the Federal Court to suggest that the plaintiff's consent was not effective. Her Honour recorded that the plaintiff "had declared the information in the form was correct and there was nothing before the [Federal] Court to suggest he wanted to attend a hearing. That conclusion is not challenged".[13]

12 Abraham J then observed that the merits of the proposed application are a relevant consideration and that it is not in the interests of justice to grant an extension of time, or leave to appeal, where there is little or no prospect of success.[14] Against that background, her Honour then proceeded to address the merits of the plaintiff's proposed grounds of appeal at a "reasonably impressionistic level" and to inquire whether each ground was "sufficiently arguable" or had "reasonable prospects of success".[15] The question her Honour posed was whether the decision of the Circuit Court was attended by sufficient doubt to warrant it being reconsidered.[16]

13 Her Honour concluded that the proposed appeal grounds had little prospect of success.[17] Consistent with the findings of the Circuit Court, the plaintiff was on notice, upon receiving the Request for Student Visa Information form, that cl 500.211 (the requirement to be enrolled in a course of study) was an issue before the Tribunal. Moreover, her Honour concluded that the plaintiff's

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11 *Kanyan* [2025] FCA 261 at [6]-[7].

12 *Kanyan* [2025] FCA 261 at [10].

13 *Kanyan* [2025] FCA 261 at [10].

14 *Kanyan* [2025] FCA 261 at [11]-[12].

15 *Kanyan* [2025] FCA 261 at [13].

16 *Kanyan* [2025] FCA 261 at [14].

17 *Kanyan* [2025] FCA 261 at [20].

submissions did not identify any reasonably arguable error in the reasoning of the Circuit Court in dismissing the plaintiff's application to that Court on the basis that the plaintiff had consented to the Tribunal deciding his review application without a hearing. Abraham J held that the decision of the Circuit Court was not attended by sufficient doubt to warrant the grant of leave to appeal or an extension of time.

Proceeding in this Court

14 The plaintiff advanced a single ground in support of his application for a constitutional or other writ: that the Federal Court made "an error in the judgment by failing to accept that the grounds [were] arguable, at an impressionistic level, despite the questions raised by the plaintiff in the matter, as listed below, that lacked substantial answers in the case law or ... clearly established authorities as sought".

15 Three matters were then listed by the plaintiff as lacking "definitive authority on the subject matter":

> "i. Can the same document, i.e. Student Visa Information Form, or the same sections: s 359 (in combination with 359C and 360); grant or entitle the plaintiff a hearing on one hand and [on] the other exhaust or deny the same right to a hearing? If so, which one should prevail? In the alternative, can the plaintiff's hearing entitlement be denied based on their Response under s 359, when s 360 and s 359C otherwise guarantee[] the right to a hearing upon such response? Does not the plaintiff submitting information requested under s 359 make the plaintiff entitled to a hearing under s 360 and s 359C; if so, what power [does] the Tribunal [have] to take that away?
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> ii. Can the consent required under s 360(2)(b) to make a decision without hearing (waiving the requirement that the Tribunal must invite the plaintiff to appear before it under s 360) be given by selecting a drop-down answer sent in a document in compliance with s 359 request? Does such consent [need to] be given after the actual hearing invitation by the Tribunal, or be initiated by the plaintiff before hearing invitation? If the Court considers the s 359 response as informed consent, was it for the review of GTE [scil, "Genuine Temporary Entrant" criteria] on file (as indicated by the note below the consent), or was it a broader consent to affirm the decision on any other criteria or new dispositive issue?
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> iii. Can a dispositive issue arise only after the Tribunal member assigned to the matter has considered the file and/or documents that

> the Tribunal has? Can the Tribunal, without the member's consideration and determination, generalize dispositive issues in advance and raise it as a note in any request (rather than a formal notice) by any officer of the Tribunal; if so, is it sufficient to discharge the Tribunal of its obligation to inform the applicant of any dispositive issue in the matter?"

16 The plaintiff submitted that Abraham J had a statutory duty to determine, first, whether there existed any arguable grounds based on the numerous questions raised in the grounds and, second, if her Honour found otherwise, to provide reasons for her decision including reference to any relevant case authority where similar matters were considered and where other applicants or plaintiffs were unsuccessful. The plaintiff submitted that, in the absence of such reasoning and authority, it could not reasonably be accepted that her Honour discharged her duty to assess the merits of the grounds or the questions posed and to make a determination.

17 The plaintiff accepted that an assessment by Abraham J of the merits of the proposed grounds of review at a "reasonably impressionistic level" was consistent with authority. The plaintiff's complaint was that her Honour's judgment failed to discharge the responsibility or properly exercise the judicial function "of determining whether, at an impressionistic level, the grounds were so hopeless to warrant dismissal of the matter, or whether, in the interest[s] of [the] administration of justice, there was a sufficient basis to grant an extension of time to allow fuller consideration of the arguments for and against each [of the] grounds of review at a later stage, particularly in ... light of [the] factual circumstances presented to her".

18 The plaintiff's application faces a number of difficulties. To be entitled to the relief sought – a writ of certiorari and a writ of mandamus – the plaintiff must demonstrate jurisdictional error by the Federal Court. As explained in *Craig v South Australia*,[18] "the ordinary jurisdiction of a court of law encompasses authority to decide questions of law, as well as questions of fact, involved in matters which it has jurisdiction to determine". A court may make errors in

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18 (1995) 184 CLR 163 at 179. See also *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531 at 572 [67]; *AUK15 v Minister for Immigration and Border Protection* [2016] HCATrans 36 at lines 1514-1565; *Plaintiff S254/2018 v The Honourable Justice McKerracher* [2019] HCATrans 212 at lines 28-33.

deciding questions of law or fact, and the decision may therefore be appealable, but those errors are not ordinarily jurisdictional errors.[19]

19 The plaintiff has not identified any jurisdictional error by the Federal Court such as could entitle him to the relief he seeks. Nothing in Abraham J's reasons for decision suggests that her Honour misconstrued or misconceived the nature of her function or the extent of the power her Honour was exercising, being the correction of errors of the type that *might* amount to jurisdictional error.[20] As has been explained, her Honour observed correctly that she had a discretion to grant both an extension of time and leave to appeal and that there were a range of factors that were generally relevant to the exercise of those discretions. Her Honour's approach was orthodox, and no jurisdictional error has been identified, let alone established. There was also no error in Abraham J considering the merits of the proposed appeal as a relevant consideration and then deciding that, where the proposed grounds had no or little prospect of success, it was not in the interests of justice to grant an extension of time or leave to appeal.

20 The plaintiff's submission that the Federal Court, and now this Court, should provide authoritative guidance on the questions posed by the plaintiff is misconceived. First, as has been explained, the basis of the plaintiff's submissions before the lower courts was that the Tribunal was required to invite him to comment on the information he provided in his s 359(2) response (namely, that he was not enrolled in a registered course of study) and to invite him to a hearing, despite him having consented to the Tribunal making a decision without doing so. In respect of the former issue, Abraham J referred to the Circuit Court's conclusion that the plaintiff was on notice, from at least the date of the s 359(2) invitation and provision of the Request for Student Visa Information form, that satisfaction of cl 500.211 was an issue on the review. In respect of the latter issue, as Abraham J observed, there was nothing in the materials or the evidence before the Federal Court to suggest that the plaintiff's consent was not effective and, indeed, there was no challenge to the conclusion that the plaintiff had "declared the information in the form was correct and there was nothing before the [Federal] Court to suggest he wanted to attend a hearing". In short, there was no failure to address any matter pressed by the plaintiff in the lower courts.

21 Second, to the extent that the plaintiff now seeks to have this Court address a contention that the Tribunal fell into jurisdictional error having regard to an issue raised or determined in an earlier proceeding, or which ought reasonably to have been made or raised for determination in that earlier proceeding, it would be

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19 *Craig* (1995) 184 CLR 163 at 179-180.

20 *Craig* (1995) 184 CLR 163 at 176-180, 186.

an abuse of process for the plaintiff to do so in the original jurisdiction of this Court, when he had already unsuccessfully litigated that issue in the Circuit Court and the Federal Court.[21]

Conclusion and orders

22 For those reasons, the plaintiff's application for a constitutional or other writ is dismissed with costs.

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21 See, eg, *Plaintiff S3/2013 v Minister for Immigration and Citizenship* (2013) 87 ALJR 676 at 678 [11]-[14]; 297 ALR 560 at 562-563; *Tomlinson v Ramsey Food Processing Pty Ltd* (2015) 256 CLR 507 at 518-519 [25]-[26].