HIGH COURT OF AUSTRALIA

10 April 2025

PLAINTIFF M19A/2024 & ORS v MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS
[2025] HCA 17

Today, the High Court allowed an appeal from a decision of a single judge of the High Court, in circumstances where a concession as to jurisdictional error by the delegate was properly made by the Minister for Immigration, Citizenship and Multicultural Affairs ("the Minister").

In their amended notice of appeal, the appellants raised for the first time a contention that the decision of the delegate of the Minister to cancel the first appellant's protection visa under s 116(1AA) of the *Migration Act 1958* (Cth) ("the Act") is vitiated by jurisdictional error by reason of the delegate having given weight to the fact that the first appellant did not respond to a "Notice of Intention to Consider Cancellation" of that visa in circumstances where there was no legal obligation on the first appellant to respond to such a notice.

In response to the application for leave to raise the new issue, the Minister consented to the making of orders allowing the appeal, setting aside the judgment and substituting orders which include the issue of a writ of certiorari and a declaration. The parties also provided to the Court an agreed document explaining the circumstances in which this new point has been raised for the first time in this appeal and which recorded the Minister's concession that the delegate had therefore fallen into jurisdictional error in this case.

The High Court unanimously allowed the appeal and held that the proper exercise of its power under s 37 of the *Judiciary Act 1903* (Cth) necessitates that the Court on appeal be satisfied that such orders as it makes are appropriate, even if those orders are sought and made by consent. The Court held that the Minister's concession in accepting that the delegate was not entitled to give any weight to the fact of the first appellant not responding to the Notice of Intention to Consider Cancellation given that there was no obligation to do so under s 119 of the Act is correct. Accordingly, the orders as consented to by the parties were made.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.