HIGH COURT OF AUSTRALIA

3 September 2025

KHALIL v MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS & ANOR
[2025] HCA 33

Today, the High Court unanimously dismissed an appeal from a judgment of the Full Court of the Federal Court of Australia. The issue presented by the appeal was whether the then Administrative Appeals Tribunal ("the Tribunal") was required by s 499(2A) of the *Migration Act 1958* (Cth) ("the Act") to comply with ministerial directions in force at the time of its decision, or with directions in force at the time of either: (i) the decision under review; or (ii) the making of the application for review.

The appellant was an Egyptian national who was convicted of several offences between November 2013 and January 2016, including an offence against his then spouse of unlawful assault occasioning bodily harm with circumstances of aggravation. In November 2017, a delegate of the Minister refused the appellant's application for a partner visa in the exercise of the discretion in s 501(1) of the Act, on character grounds. The delegate applied Direction 65, which set out three primary considerations for deciding whether to refuse to grant a visa under s 501(1): protection of the Australian community, the best interests of minor children in Australia, and expectations of the Australian community. The appellant exercised his statutory right to apply to the Tribunal for a review of the delegate's decision. By the time of the Tribunal's decision, Direction 65 had been revoked and replaced with Direction 79, which in turn was revoked and replaced with Direction 90. Direction 90 differed from Direction 65 by including a fourth primary consideration in making a decision under s 501(1), being whether conduct engaged in by the visa applicant constituted "family violence". In October 2022, applying Direction 90, the Tribunal affirmed the delegate's decision of November 2017.

The appellant applied to the Federal Court for judicial review of the Tribunal's decision, relevantly arguing that the Tribunal made a jurisdictional error by failing to comply with Direction 65. The primary judge (Moshinsky J) rejected the appellant's argument that he had an accrued right to have his application for review determined in accordance with the substantive law in force at the time of his application to the Tribunal, including Direction 65. The Full Court (McDonald J, Katzmann and Dowling JJ agreeing) dismissed the appellant's appeal.

The High Court dismissed the appeal with costs. The power conferred on the Tribunal by s 43(1) of the *Administrative Appeals Tribunal Act 1975* (Cth) indicated that the Tribunal's task was to apply the laws governing the exercise of powers and discretions in force at the time of the Tribunal's decision. Section 499(2A) of the Act required the Tribunal to comply with Direction 90, being the direction in force at the time of the October 2022 decision. The appellant did not have an accrued right to a review by the Tribunal in accordance with Direction 65.

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.