



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: S66/2020  
File Title: DVO16 v. Minister for Immigration and Border Protection & A  
Registry: Sydney  
Document filed: Form 27F - Outline of oral argument  
Filing party: Appellant  
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#### Important Information

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**DVO16**

Appellant

and

**Minister for Immigration and Border Protection**

First Respondent

**Immigration Assessment Authority**

Second Respondent

**APPELLANT'S OUTLINE OF ORAL SUBMISSIONS**

**Part I:**

We certify that this submission is in a form suitable for publication on the internet.

**Part II: Appellant's Outline of Propositions**

A *Material Mistranslation*

1 The appellant is a Shi'a Muslim from Khuzestan Province, Iran, and claimed protection on the basis of persecution by the Iranian state on the basis of his Ahwazi Arab ethnicity (referred to in AS as the **ethnicity claim**) {AS [7] - [9]}.

2 Material mistranslation in the course of a protection visa interview conducted by a delegate of the first respondent (**delegate**) had the result that no questioning specific to the ethnicity claim *objectively* took place {AS [10] - [12], [20], [26]; ARS [12] - [17]}.

3 Lacking knowledge of the mistranslations, the delegate operated under two mistaken beliefs: that the appellant had been offered an adequate opportunity to give evidence and respond to the delegate's questions; and that the information conveyed to the delegate by the interpreter was responsive to the delegate's questions {AS [11] - [13]}.

4 The code of procedure as to procedural fairness applicable to the interview process is in materially similar terms to that required in a review conducted under Part 7 of the *Migration Act 1958* (**the Act**) {AS [23] - [25]}.

5 As a consequence, the material mistranslations in the interview process resulted both in a denial of procedural fairness to the appellant; and in the delegate taking into account irrelevant material (being the mistranslations), and failing to take into account relevant material (being the appellant's actual evidence) {AS [25] - [26], [32] - [34]}.

6 A fast track protection visa applicant's rights to be heard (and any associated rights to procedural fairness) on review are truncated by Part 7AA of the Act. The second respondent (IAA) is to undertake the review without accepting or requesting "new information" and without interviewing the referred applicant, except in exceptional circumstances. {AS [27] - [28]}

7 Further, the obligations with respect to procedural fairness that are imposed on the delegate and the IAA are separate and non-overlapping. The obligations imposed on the IAA are confined to matters arising from "new information" {AS [27]}.

8 Two conclusions arise from the statutory structure of the IAA review mechanism: the delegate interview occupies a central position in any later review by the IAA {AS [27] - [30], [32] - [33]}; and the review mechanism is predicated on the assumption that the code of procedure at the delegate level was complied with {AS [27] - [30], [32] - [33]}.

C The IAA's Replication of Error

9 The IAA was under no obligation to address deficiencies in the administrative process undertaken by the delegate and, as a matter of fact, did not correct the deficiency caused by the mistranslation {AS [17] - [18]}.

10 The IAA operated under the same mistaken beliefs as the delegate. Its reasoning was affected by the same gross procedural deficiencies, and it similarly took into account irrelevant material and failed to take into account relevant material {AS [17] - [19], [34], [40] - [42]; ARS [18]}.

D Subjective Knowledge as a Pre-requisite for Establishing Jurisdictional Error

11 If a material deficiency exists that undermines the deliberative or administrative processes of an administrative decision maker such as to vitiate the legal validity of the decision, the error is jurisdictional {AS [37], [45]; ARS [6] - [7]}.

12 Ordinarily no such awareness of the deficiency would exist and actual or constructive knowledge of that deficiency cannot be a prerequisite for the establishment of jurisdictional error {AS [38], [43] - [45]; ARS [8] - [9]}.

13 Translator error in the interview process arises from a failure in the first respondent's administrative processes and is outside the control of the appellant. It is distinct from representative error where an applicant might be bound by the conduct of their representative {AS [31]}.

14 If sufficiently material, and unless otherwise corrected in the course of the IAA review, it [S66/2020](#) results in the review material before the IAA being necessarily incomplete {ARS [10] - [11], [18]}. Such material deficiency exists here {AS [40] - [42]}.

10<sup>th</sup> February 2021



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