HIGH COURT OF AUSTRALIA

17 December 2015

PLAINTIFF M64/2015 v MINISTER FOR IMMIGRATION AND BORDER PROTECTION

[2015] HCA 50

Today, the High Court unanimously held that a decision by a delegate of the Minister for Immigration and Border Protection ("the Minister") to refuse to grant Refugee and Humanitarian (Class XB) (Subclass 202) visas ("Subclass 202 visas") to the plaintiff's family was not affected by jurisdictional error.

On 29 May 2010, the plaintiff arrived in Australia and became an "unlawful non-citizen" within the meaning of the *Migration Act* 1958 (Cth) ("the Act"). The plaintiff was granted a protection visa by the Minister. The plaintiff's family subsequently applied for Subclass 202 visas under the Australian Government's Special Humanitarian Programme. Subclass 202 visas are directed to the immigration of people who are subject to substantial discrimination in their home country and who are members of the immediate family of a person in Australia who has already been granted a protection visa. The plaintiff proposed his family's visa application in accordance with the Migration Regulations 1994 (Cth) ("the Regulations"). The application was refused by a delegate of the Minister. In a letter to the plaintiff's family, the delegate wrote that, in deciding to refuse the application, he had considered that Australia does not have the capacity to resettle all humanitarian visa applicants, and that only the highest priority applications can be successful.

The plaintiff commenced proceedings in the original jurisdiction of the High Court seeking an order to quash the delegate's decision to refuse to grant the Subclass 202 visas and an order requiring the Minister to determine the application according to law. The plaintiff argued that the delegate misconstrued and misapplied cl 202.222(2) of Schedule 2 to the Regulations, which provides for the grant of a visa if the Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a visa. The plaintiff also argued that the delegate unlawfully applied a policy of the Department for Immigration and Border Protection that required that the lowest priority be accorded to the plaintiff's family's application on the basis of the type of visa that the plaintiff had been granted and the circumstance that he arrived in Australia as an "irregular maritime arrival".

In refusing the plaintiff's application, the High Court held that the delegate's decision was not affected by jurisdictional error. The Court held that cl 202.222(2) raises only one criterion for the grant of a visa: namely, that the Minister is satisfied that there are compelling reasons for giving special consideration to granting that visa. The capacity of the Australian community to provide for the permanent settlement of an applicant in Australia and the number of places in Australia's Special Humanitarian Programme are considerations that may inform the Minister's state of satisfaction. The Court also held that the departmental policy was not inconsistent with the Act or Regulations and that it had not been applied inflexibly.

- *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.*

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