



## HIGH COURT OF AUSTRALIA

8 December 2021

MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND  
MULTICULTURAL AFFAIRS v ALEX VIANE

[2021] HCA 41

Today, the High Court unanimously allowed an appeal from a decision of the Full Court of the Federal Court of Australia. The appeal concerned whether a decision of the appellant ("the Minister") not to revoke a decision to cancel the respondent's visa, pursuant to s 501CA(4)(b)(ii) of the *Migration Act 1958* (Cth), was vitiated by jurisdictional error.

Following the respondent's conviction for, amongst other things, seriously assaulting his partner, his temporary visa was cancelled under s 501(3A). Subsequently, the Minister decided there was not "another reason" to revoke that decision under s 501CA(4)(b)(ii). For the purposes of making representations to the Minister about whether there was "another reason" for revocation, the respondent represented that there was a "real prospect" that he and his partner and young child would go to American Samoa (his place of birth) where they would face "substantial impediments", including language and cultural barriers and problems accessing healthcare and welfare services. In his reasons for decision, the Minister addressed the respondent's concerns and made certain findings about the conditions in American Samoa and Samoa, including that English is widely spoken and regarding the availability of healthcare and welfare services. It was common ground that there was no evidentiary material to support the Minister's findings.

The respondent sought judicial review of that decision in the Federal Court. Initially, his application was dismissed, but on appeal the Minister's decision was set aside. The majority concluded that the Minister had erred because, among other things, it was an implied condition for the exercise of the power conferred by s 501CA(4) that the Minister's state of satisfaction be formed on the basis of factual findings open to be made on the evidentiary materials. The majority also concluded that there was no evidence to support a finding that the Minister had relied upon his own personal knowledge about the conditions in American Samoa and Samoa.

The High Court held that, when applying s 501CA(4), there are few mandatorily relevant matters the Minister must consider, and otherwise the power must be exercised reasonably and in good faith. If the representations received by the Minister in support of revocation lack any substance altogether, then this of itself might justify a decision not to be satisfied that "another reason" exists to revoke the cancellation decision, without any need to make any findings of fact about the various claims made. If the Minister in giving reasons makes a finding of fact, the Minister must do so based on some evidence or other supporting material, rather than no evidence or no material, unless the finding is made in accordance with the Minister's personal or specialised knowledge or by reference to that which is commonly known. In that respect, the Minister is free to adopt both the accumulated knowledge of the Department of Immigration, Citizenship, Migrant Services and Multicultural Affairs and any draft written reasons for decision prepared by a departmental officer, provided that such reasons reflect the reasons why the Minister had reached her or his decision. There is no express requirement that the Minister disclose whether a material finding is made from

personal, specialised or accumulated knowledge. Nor was the Minister under any obligation to disclose his disagreement with the respondent's bare assertions and give the respondent yet another opportunity to make claims prior to making a decision.

- *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.*