



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: M109/2020  
File Title: BNB17 v. Minister for Immigration and Border Protection & A  
Registry: Melbourne  
Document filed: Form 27F - Outline of oral argument  
Filing party: Respondents  
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No M109 of 2020

BETWEEN:

**BNB17**  
Appellant

and

**MINISTER FOR IMMIGRATION AND BORDER PROTECTION**  
First Respondent

**IMMIGRATION ASSESSMENT AUTHORITY**  
Second Respondent

### **FIRST RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS**

#### **Part I: Certification**

1. This outline is in a form suitable for publication on the internet.

#### **Part II: Outline of propositions**

*Proposed ground 1: Authority unable to perform its statutory task*

2. Before the Federal Court the appellant sought to advance, as a ground of appeal, an argument that translation errors at the delegate interview led to a breach of s 473CB. To the extent that that argument is sought to be put again, it should be rejected (RWS [30]-[33]). Even if (contrary to RWS [30]) the appellant's answers in Tamil were "material" within s 473CB(1)(b), those answers were given to the Authority in the form of the audio recording.
3. Leave should not be granted to advance the proposed new ground. Had it been raised below, the Minister might have sought to meet it with his own evidence as to the correct interpretation of questions and answers at the interview (RWS [34]-[39]).
4. If the new ground is permitted to be raised, it fails on the facts. There was no material mistranslation.
  - (a) The principles summarised by Anderson J at CAB 97-98 [62]-[64] have been developed in cases on procedural fairness and its statutory equivalents, and thus look to whether an applicant has been adequately heard. The present context raises a different issue (whether the Authority is prevented from understanding and deciding upon the claims advanced) but there is no reason why any more

stringent standard should be applied. Thus, “translation is not a perfect science” (RWS [41]).

- (b) As to the first instance of alleged mistranslation (questioning as to what the appellant meant by “beating”), the question was (at least ultimately) sufficiently clearly interpreted. It was open to the Authority to place weight on the fact that no cogent response was given (RWS [43]-[44]).

- ABFM 96, 97.

- (c) As to the second instance of mistranslation (a question as to why the appellant had not previously claimed to have been harmed after 2009), the question was asked again later in the interview, properly translated, and answered (RWS [46]-[47]).

- ABFM 97-98, 113-114.

5. Alternatively, the Minister would rely on the submissions made in *DVO16* as to why mistranslations at an interview with the delegate do not prevent the Authority carrying out its statutory review function.

*Ground 2: Unreasonableness*

6. Whether the Authority acted unreasonably, in not using its power under s 473DC in response to assertions that mistranslations had occurred at the interview, must be assessed in the light of (i) the information available to the Authority and (ii) the significance of the deficiency (RWS [50], and see [36]-[38]).

7. In a post-interview submission to the delegate, adopted in a submission to the Authority, the appellant’s representatives put forward three “examples” of what were said to be mistranslations by the interpreter. These examples in themselves did not suggest that the substance of his evidence had not been sufficiently communicated (RWS [52]).

- ABFM 126, 141-142.

8. It was open to the Authority to have regard to:

- (a) the fact that no attempt was made to add to these examples, so as to portray a more general deficiency; and
- (b) the delegate’s conclusion that, for the most part, all parties were able to communicate clearly and that the appellant’s testimony had been “vague and evasive” (RWS [53]-[54]).

9. Having regard to the statutory context (RWS [55]), it was not unreasonable for the Authority to proceed without taking steps under s 473DC to hear from the appellant.

M109/2020

Dated: 10 February 2021



**Geoffrey Kennett SC**  
**Nick Wood**