



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

**MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND
MULTICULTURAL AFFAIRS**

Appellant

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and

ALEX VIANE

Respondent

APELLANT’S OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

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

Part II: Outline of propositions

Did the impugned findings involve legal error?

2. No recourse to specific evidence or specialised knowledge was required. The findings at [23] and [64] of the Minister’s reasons were:
 - (a) Responsive to particular submissions advanced by the Respondent, and in context expressed no more than a lack of persuasion about those submissions; and
 - (b) Things that could properly be assumed about a country in the modern world, absent some identified reason to think otherwise.

[AWS [19]-[21]]

3. Administrative decision makers including the Minister do not act only on evidence put before them. They are expected to build up a store of knowledge over time. Failure to cite the specific source of a proposition of fact therefore does not mean that it had no source [AWS [22]].

- *Muin v Refugee Review Tribunal* (tab 27) at [116], [263]-[264]

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4. Further, the Minister's position is analogous to that of an expert tribunal. The statute proceeds on the basis that he or she has a body of knowledge about matters relevant to the disposition of cases such as the present one and that he or she will draw on it as necessary. Whether the Minister has such knowledge was not properly a matter for factual inquiry [AWS [23]-[26]].

5. The relevant controlling factor for deployment by a decision-maker of knowledge that he or she already has (apart, obviously, from *bona fides*) is procedural fairness [AS [25]].

6. If the point was one for factual inquiry, the Respondent did not meet the onus of proof that fell on him. It is not proposed to add to what is said in AWS [27]-[34] on this point.

If there was error, did it go to jurisdiction?

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7. If the test is whether unsupported findings of fact were made that affected a "critical step" in the reasoning, the test is not met here [AWS [42]-[43]; Reply [8]].

(a) The task was an evaluative one involving weighing competing factors. No individual step can be said to be critical.

(b) The impugned findings related to issues upon which the Minister substantially agreed with the Respondent and which were treated as weighing in his favour.

(c) If conditions in American Samoa and Samoa were as harsh as the Respondent submitted they were, it was not in contest that he retained the option of going to New Zealand where such conditions would not be met.

8. Alternatively, it is erroneous to frame the test in terms of whether the error affected a critical step in the reasoning. The correct question is whether the state of satisfaction reached by the Minister was one that a rational decision maker could reach [AWS [35]-

[41]. The conclusion reached by the Minister was plainly one that was open [AWS [41]].

- *Minister for Immigration and Border Protection v SZMDS* (tab 15) at [130]-[131], [135]

Dated: 9 September 2021



Geoffrey Kennett



Rachel Francois

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Counsel for the appellant