

PLAINTIFF M174/2016 v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR (M174/2016)

Date Special Case referred to Full Court: 17 May 2017

The plaintiff, a citizen of Iran, entered Australia on 11 October 2012. On 1 September 2015, he applied for a temporary protection visa on the basis (inter alia) that he feared persecution for reason of his conversion to Christianity. He provided a letter of support from Reverend Brown, the pastor at a church he attended. The Minister's delegate refused the visa on 15 April 2016. Prior to making that decision, the delegate conducted an interview with Reverend Brown in relation to the plaintiff's attendance at church. Reverend Brown provided information that suggested that the plaintiff had attended church less often than he claimed. The delegate did not inform the plaintiff of the information she received from Reverend Brown or invite him to comment on it. The delegate's decision was subsequently referred to the second respondent (the Immigration Assessment Authority) which affirmed the decision. The Authority had regard to the material that was before the delegate, but refused to have regard to certain additional information provided by Reverend Brown and others in relation to the plaintiff's church attendance, or to conduct interviews.

The plaintiff is seeking writs of certiorari directed to the Minister and to the Authority to quash their decisions, and a writ of mandamus to require the Minister to consider and determine his visa application according to law. He contends that the delegate's decision of 15 April 2016 is affected by jurisdictional error because the delegate failed to comply with s 57 of the *Migration Act* 1958 (Cth) ('the Act') which required the delegate to (a) give particulars of relevant information to the plaintiff; (b) ensure, as far as was reasonably practicable, that the plaintiff understood why it was relevant to consideration of the visa application; and (c) invite the plaintiff to comment on it.

On 17 May 2017 Nettle J referred the Special Case for consideration by the Full Court.

The questions in the Special Case include:

1. Did the Delegate fail to comply with section 57(2) of the Act?
2. If so, did the failure by the Delegate to comply with section 57(2) of the Act have the consequence that:
 - (a) there is no 'fast track reviewable decision' capable of referral by the Minister (or his delegate) to the Authority under section 473CA of the Act; or
 - (b) an essential precondition for the valid exercise of power by the Authority under section 473CC of the Act is not satisfied,

with the result that the Authority has no jurisdiction to conduct a review under Part 7AA of the Act?