



HIGH COURT OF AUSTRALIA

Public Information Officer

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JASON SHAW v MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS

The High Court of Australia today upheld a section of the Migration Act that enabled the Minister to cancel the visa of a British man who had lived in Australia since he was a child but who had never become an Australian citizen.

Mr Shaw was born in the United Kingdom on 27 December 1972 and arrived in Australia on 17 July 1974 and has not left Australia since. He has two children who are citizens. Mr Shaw had criminal convictions dating back to age 14. In 1998 he was sentenced to five years' imprisonment for property offences and two years' jail for drug offences.

On 17 July 2001 the Minister used his power under section 501(2) to cancel Mr Shaw's visa because Mr Shaw failed the character test in section 501(6). He had a substantial criminal record within the meaning of section 501(7).

The Court was asked whether Parliament's power to make laws with respect to naturalisation and aliens under section 51(xix) of the Constitution supported section 501(2) to the extent that it authorised the Minister to cancel Mr Shaw's visa. The Court, by a 4-3 majority, answered that section 501(2) was within power.

Mr Shaw argued he was not an alien when he arrived in Australia and nothing since had placed him within reach of the aliens power because he was a British subject. The Court held that British subject was not a synonym for the constitutional expression "subject of the Queen". The Court held that the relationship between the UK and Australia had changed since federation, so that the UK was now regarded as a foreign power and its citizens as aliens, and that the Constitution contemplated such change. UK citizens could not be regarded as subject to implicit protection from the legislative power with respect to aliens.

- *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.*