



HIGH COURT OF AUSTRALIA

Public Information Officer

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TANIA SINGH (AN INFANT BY HER NEXT FRIEND MALKIT SINGH) v
COMMONWEALTH OF AUSTRALIA AND MINISTER FOR IMMIGRATION AND
MULTICULTURAL AND INDIGENOUS AFFAIRS

The High Court of Australia today dismissed a challenge to the validity of a Commonwealth law providing for the removal, as an unlawful non-citizen, of a child born in Australia of Indian parents.

Tania Singh was born in Mildura on 5 February 1998. Her parents and nine-year-old brother were born in India. They arrived in Australia in April 1997 and lodged applications for protection visas, claiming refugee status. Those applications have been rejected by the Immigration Department and the Refugee Review Tribunal. Further proceedings are ongoing in the Federal Court. In 2003 Tania, via her father, filed a writ of summons in the High Court seeking a declaration that, because she was born in Australia, section 198 of the Migration Act, providing for removal of unlawful non-citizens, did not validly apply to her. Section 10 of the Citizenship Act provides that a person born in Australia is an Australian citizen if at least one parent was an Australian citizen or permanent resident or other long-term resident. Tania is a non-citizen.

The primary issue before the Court was whether section 51(xix) of the Constitution, which gives Parliament power to make laws with respect to naturalisation and aliens, empowered Parliament to legislate for the removal of someone in Tania's position. Tania's case was that, despite her lack of Australian citizenship, her birth in Australia necessarily meant she was not an alien and treating her as such was beyond the legislative competence of Parliament. It was argued that at the time of federation in 1901 "alien" had an accepted and fixed legal meaning which excluded someone born in Australia, therefore Parliament had no power to treat Tania as an alien.

The High Court, by a 5-2 majority, held that laws treating Tania as having alien status were within the power conferred on Parliament by section 51(xix). The majority held that the meaning of alien in 1901 was far from fixed, and would not necessarily have excluded someone in Tania's position. The common law position that anyone born in the British Dominions was a British subject had already by then been modified several times by the British Parliament. Naturalisation, allegiance, nationality and alien status were controversial subjects in Britain and Europe during the latter part of the 19th century and also at Australia's constitutional Convention Debates in the 1890s.

- *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.*