HIGH COURT OF AUSTRALIA

9 September 2020

APPLICANT S270/2019 v MINISTER FOR IMMIGRATION AND BORDER PROTECTION
[2020] HCA 32

Today the High Court dismissed an appeal from a judgment of the Full Court of the Federal Court of Australia concerning the validity of the decision of the Minister for Immigration and Border Protection under s 501CA(4) of the *Migration Act 1958* (Cth) not to revoke the cancellation of the appellant's Class BB Subclass 155 Five Year Resident Return visa, which is not a protection visa.

Section 501(3A) of the *Migration Act* relevantly provides that the Minister must cancel a visa if satisfied that the person does not pass the character test because they have a substantial criminal record and the person is serving a sentence of imprisonment on a full-time basis. Section 501CA(4) provides that the Minister may revoke the decision to cancel a visa if two conditions are met. The first is that the person makes representations in accordance with the invitation from the Minister (s 501CA(4)(a)). The second is that the Minister is satisfied that either the person passes the character test or there is another reason why the decision should be revoked (s 501CA(4)(b)).

The appellant was born in Vietnam and arrived in Australia on a humanitarian visa in 1990. The visa did not have as a criterion that the appellant was entitled to protection under the Convention relating to the Status of Refugees as modified by the Protocol relating to the Status of Refugees. In 1994, the appellant was granted a Class BB Subclass 155 Five Year Resident Return visa.

That visa was cancelled pursuant to s 501(3A). The appellant was sent a notice of the decision, a copy of the relevant ministerial direction and other enclosures including a revocation request form. The appellant filled out the revocation request form and sent it to the Department of Immigration and Border Protection. Subsequently, in a letter from the Department, the appellant was provided with particulars of information including an "International obligations and humanitarian concerns assessment" ("the Assessment") and invited to comment. The Assessment concluded that no non-refoulement obligations were owed with respect to the appellant. The appellant responded to the request for comment but not in relation to the Assessment.

The Minister declined to revoke the cancellation. The appellant's application for judicial review and appeal to the Full Court were unsuccessful. The appellant was granted special leave to appeal to the High Court on the ground that, when exercising the power under s 501CA(4), the Minister was obliged to, and failed to, consider whether non-refoulement obligations were owed to the appellant. A majority of the High Court held that the Minister was not required to consider whether Australia owed non-refoulement obligations to the appellant as "another reason" under s 501CA(4)(b)(ii). There was nothing in any of the material submitted by the appellant in support of his revocation request that indicated or suggested that he now held a subjective or well-founded fear of persecution in Vietnam.

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.

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