



HIGH COURT OF AUSTRALIA

14 October 2020

ABT17 v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR

[2020] HCA 34

Today the High Court unanimously allowed an appeal from a judgment of the Federal Court of Australia. The appeal concerned a review by the Immigration Assessment Authority ("the IAA") under Pt 7AA of the *Migration Act 1958* (Cth) ("the Act") of a decision of a delegate of the Minister for Immigration and Border Protection ("the Minister") to refuse to grant the appellant a temporary protection visa. The issue raised by the appeal was whether it was legally unreasonable for the IAA to depart from the delegate's assessment of the appellant's credibility without inviting the appellant to an interview to obtain new information. Subject to Pt 7AA of the Act, under s 473DB the IAA is required to review a fast track reviewable decision by considering the review material provided to it, and without accepting new information or interviewing the applicant. Under s 473DC, the IAA may get new information that was not before the Minister and that the IAA considers may be relevant, and the IAA may invite the person to give the new information at an interview. However, under s 473DD the IAA must not consider new information unless it is satisfied that there are exceptional circumstances, and that either the new information was not and could not have been provided to the Minister or that it is credible personal information.

The appellant lodged an application for a temporary protection visa which was refused by a delegate of the Minister. While the delegate found that the appellant's evidence during the visa interview was plausible, the delegate was not satisfied that the appellant faced a well-founded fear of persecution based on country information concerning improved circumstances relating to Tamils in Sri Lanka. The delegate's decision was referred to the IAA for review. The IAA affirmed the delegate's decision. After reviewing the audio recording of the interview, the IAA accepted some of the appellant's claims but found that others were exaggerated and embellished. As the IAA did not accept the appellant's account of events, and considered there was otherwise no credible information to indicate he was of interest to Sri Lankan authorities, it concluded that the appellant did not have a well-founded fear of persecution. The IAA further held that this conclusion was supported by the country information considered by the delegate. An application for judicial review was dismissed by the Federal Circuit Court. On appeal to the Federal Court, the appellant contended that the IAA's decision was legally unreasonable because it made credibility findings contrary to those of the delegate without inviting the appellant to an interview. However, the Court held that it was not necessary to decide this issue, and dismissed the appeal on the basis that any failure to interview the appellant was not material to the IAA's decision because it was independently supportable by the country information relied on by both the delegate and the IAA.

On appeal to the High Court, the Court unanimously held that in the circumstances of this case it was legally unreasonable for the IAA to depart from the delegate's assessment of the appellant's credibility. The plurality held that the legal unreasonableness arose from the IAA having departed from the delegate's assessment of the appellant's credibility without exercising its power under s 473DC of the Act to invite the appellant to an interview to obtain new information. The remaining Justices held that it was legally unreasonable for the IAA to depart from the delegate's assessment of the appellant's credibility in the circumstances, but that it either may not have been or was not open to the IAA to interview the appellant because the appellant's demeanour was not "new information" within the meaning of s 473DC of the Act.

- *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.*