



HIGH COURT OF AUSTRALIA

14 April 2021

DVO16 v MINISTER FOR IMMIGRATION AND BORDER PROTECTION; BNB17 v
MINISTER FOR IMMIGRATION AND BORDER PROTECTION
[2021] HCA 12

Today, the High Court unanimously dismissed these two appeals. *DVO16 v Minister for Immigration and Border Protection* was an appeal from the Full Court of the Federal Court of Australia, and *BNB17 v Minister for Immigration and Border Protection* was an appeal from a single judge of the Federal Court of Australia exercising appellate jurisdiction. Each appeal concerned the effect on a review by the Immigration Assessment Authority ("the Authority") under Pt 7AA of the *Migration Act 1958* (Cth) of translation errors in questions asked and responses given at a protection visa interview between an applicant, assisted by an interpreter, and a delegate of the Minister. In each case, the High Court was asked to decide whether translation errors resulted in the Authority's decision being affected by jurisdictional error.

The High Court observed that whether and if so in what circumstances mistranslation might result in jurisdictional error turns necessarily on whether and if so in what circumstances mistranslation might result in non-compliance with a condition expressed in or implied into the statute which authorises the decision-making process and sets the limits of the decision-making authority. In relation to a decision of the Authority under Pt 7AA, the High Court explained that there are two ways in which translation errors might result in non-compliance with express or implied statutory conditions.

The first involves breach of the implied condition of reasonableness. In circumstances where the Authority has knowledge of translation errors, the Authority might breach the condition of reasonableness implied into its powers to get and consider new information if it fails to exercise those powers to interview the referred applicant and then consider the applicant's testimony as correctly translated. The Authority might equally breach the reasonableness condition implied into its duty to review the referred decision by considering the review material if it makes findings adverse to the applicant with knowledge of the translation errors, without having exercised its powers to get and consider new information which might address those errors. The second way in which translation errors might result in non-compliance with Pt 7AA is through non-compliance with the Authority's overriding duty to "review" the referred decision. Mistranslation has the potential to result in the Authority failing to understand and therefore to consider the substance of an applicant's claim. Mistranslation in that way has the potential to result in the Authority failing to discharge the core element of its overriding duty, namely to assess the claims for protection in fact made by an applicant against the criteria for the grant of the visa in determining for itself whether it is satisfied that the criteria for the grant of the visa have been met.

In each of the cases under appeal, the High Court held that the translation errors did not result in jurisdictional error. In *DVO16*, the translation errors could not have borne on the question of reasonableness because the Authority was not aware of them. In *BNB17*, although the Authority was aware of three examples of errors, the High Court held that those errors were not so grave or extensive as to render the course adopted by the Authority unreasonable. As to the second way in which invalidity could occur, in each case the High Court held that the translation errors did not result in the Authority failing to understand and therefore to consider the appellant's claims.

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.