



HIGH COURT OF AUSTRALIA

4 March 2021

MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND
MULTICULTURAL AFFAIRS v AAM17 & ANOR
[2021] HCA 6

Today the High Court unanimously allowed an appeal from a decision of the Federal Court of Australia. The appeal concerned the Federal Court's conclusion that the circumstances of the Federal Circuit Court's delivery of an *ex tempore* judgment without translation denied the first respondent procedural fairness.

The first respondent's application for a protection visa was rejected by a delegate of the appellant. The Administrative Appeals Tribunal affirmed the delegate's decision. The first respondent sought judicial review of the Tribunal's decision in the Circuit Court. The first respondent was not represented before the Circuit Court, but he asked for and obtained the assistance of an interpreter. The Circuit Court dismissed the application for judicial review and delivered an *ex tempore* judgment. The orders were translated for the first respondent's benefit, but the oral reasons for judgment were not. Written reasons for judgment were delivered after the first respondent filed his notice of appeal in the Federal Court.

The Federal Court concluded that neither the written reasons of the Tribunal nor of the Circuit Court disclosed any error. However, the Federal Court allowed the appeal, set aside the orders made by the Circuit Court, and remitted the matter to that Court to be reheard by a different Circuit Court judge. The Federal Court considered that the Circuit Court's failure to have the oral reasons for judgment translated for the first respondent's benefit constituted a denial of procedural fairness, and that undoing this denial required the Circuit Court's judgment to be set aside.

Allowing the appeal, the High Court accepted that as a matter of general fairness, rather than independent legal duty, the first respondent ought to have had the benefit of translated *ex tempore* reasons or written reasons at an earlier time. However, the High Court held that the final instance of any right or entitlement of the parties arising from the Circuit Court's obligation to afford procedural fairness occurred at the time the parties made their concluding submissions. As such, any delay in the provision of written reasons did not constitute a denial of procedural fairness before the Circuit Court. Further, any practical injustice that may have followed the delay in the Circuit Court's provision of written reasons could have been addressed by the Federal Court inviting the first respondent to amend his grounds of appeal to address the contents of the Circuit Court's published reasons, and, if necessary, adjourning the hearing of the appeal to permit this to take place. In that regard, the High Court noted that the first respondent never independently sought to amend his grounds of appeal to take account of the published reasons of the Circuit Court. Setting aside the Circuit Court's judgment and remitting the matter to be reheard went beyond that which was necessary to provide practical justice to the first respondent.

- *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.*