



HIGH COURT OF AUSTRALIA

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Details of Filing

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**IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY**

BETWEEN:

PLAINTIFF S22/2025
Plaintiff

and

MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS
Defendant

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OUTLINE OF ORAL SUBMISSIONS OF THE PLAINTIFF

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PART I INTERNET PUBLICATION

This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

The revocation decision

1 The delegate's decision is at **SC-Tab 41**.

- Index of relevant material at 342, including reference to **Attachment H**.
- Reasons at [3], [8]-[9], [83]-[85], [88], [98], [101]-[104], [106]-[107], [110]-[119], [125], [130]-[132], [134].

Ground 1: Legal consequences — three paths to jurisdictional error

10 2 **Legal unreasonableness/irrationality:** The delegate reasoned from a factual premise that the delegate knew, in fact, was wrong. The delegate *knew*, from the material that had been placed before him, it was *not* the case that the Minister would “separately consider” the *type* of visa to be granted to the plaintiff following further advice from the Department. To the contrary, the delegate knew that the process for the grant of a BVR to the plaintiff was underway: Application [19] (**AB 13**); Reply [2]-[3] (**AB 81-82**).

- Reasons at [117];
- Regulations (24 Oct 2024), regs 2.20(18), 2.25AB, Sch 2 cl 070.6 (**JBA v 1, Tab 4**);
- *YBFZ* (2024) 99 ALJR 1 at [33], [36] (**JBA v 3, Tab 28**);
- Special Case at [11], [13], [16], [38]-[41], [48], [50]-[52], [54(b)], [55];
- 20 • **SC-Tabs 33-37, 40-42, 44-45**.

3 **Misunderstanding of the law:** The delegate reasoned that the Minister would separately consider the type of visa to be granted and the conditions imposed on it. That involved a misconception of the statutory scheme — the delegate failed to appreciate that in the circumstances of the plaintiff, the *only* visa that the Minister would have power to grant the plaintiff was a BVR under reg 2.25AA or 2.25AB: Application [15] (**AB 12**); Reply [6] (**AB 84**).

- *Patterson* (2001) 207 CLR 391 at [1] (Gleeson CJ), [83], [87] (McHugh J), [189]-[190], [194], [196] (Gummow and Hayne JJ). (**JBA v 2, Tab 12**);
- *Graham* (2017) 263 CLR 1 at [68] (**JBA v 2, Tab 6**).

30 4 **Failure to consider:** The delegate purported to consider the legal consequences of the decision but failed to discharge that obligation, by failing to consider the consequences of the application of the BVR scheme to the plaintiff: Application [15], [17] (**AB 12-13**); Reply [4] (**AB 83**).

- *NBMZ* (2014) 220 FCR 1 at [6], [8]-[10], [17]-[18] (**JBA v 3, Tab 25**);
- **SC Tab 49**.

Ground 2: Failure to comply with the Direction under s 499

5 The delegate was required to comply with Ministerial Direction 110, by reason of s 499(2A) of the Act.

- Direction 110, cl 8.5 (**SC Tab 47, 551**);
- *Ismail* (2024) 98 ALJR 196 at [52];
- Reasons at [101]-[104].

6 The delegate misapplied para 8.5(2) of Direction 110 in two ways: *first*, because none of the plaintiff's offending fell within the listed types of conduct in that clause, there was no logical basis for proceeding on the basis that the expectation in that clause applied; and, 10 *second*, the delegate's reasoning is internally inconsistent with the findings made on the legal consequences of the decision: Application [23]-[24] (**AB 14-15**); Reply [7] (**AB 84**).

Ground 3: Privileged information and procedural fairness

7 The delegate was on notice that the Merit Advice was privileged and been provided in error (or at very least, was not provided for the purposes of the revocation decision). Procedural fairness required that the plaintiff be informed that the delegate proposed to consider the material and be given an opportunity to respond: Application [26]-[31] (**AB 15-17**); Reply [8]-[11] (**AB 84-86**).

- The Merit Advice is part of Attachment H (labelled H-2) (see **SC Tab 47, 473**);
- Special Case at [19], [21]-[22], [34], [42]-[47], [54(a)];
- **SC Tabs 19, 23**;
- Reasons at [7], [35];
- *VEAL* (2005) 225 CLR 88 at [18];
- *Kioa v West* (1985) 159 CLR 550 at 624.

Extension of time

8 It is necessary in the interests of justice to grant an extension of time: (a) the delay is not "inordinately" long; (b) the delay is satisfactorily explained; (c) the consequences for the plaintiff if an extension is not granted are grave; (d) the Minister does not assert any prejudice; (e) the grounds have sufficient merit: Application [9]-[11] (**AB 9-10**); Reply [1] (**AB 80**).

- Special Case at [1], [3]-[4], [62]-[64], [66]-[68], [71]-[74];
- *Katoa* (2022) 276 CLR 579 at [17] (**JBA v 2 Tab 13**).



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