HIGH COURT OF AUSTRALIA

2 April 2025

CZA19 v COMMONWEALTH OF AUSTRALIA & ANOR;
DBD24 v MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS
[2025] HCA 8

Today, the High Court unanimously held in two proceedings that the detention of an alien as an unlawful non-citizen under ss 189(1) and 196(1) of the *Migration Act 1958* (Cth) ("the Act") does not become constitutionally invalid because the alien has a pending application for a protection visa and there is no real prospect of their removal becoming practicable in the reasonably foreseeable future.

CZA19 arrived in Australia in 2009, was arrested and charged with an offence on arrival, and issued a criminal justice stay visa. On his eventual release on parole in 2018, CZA19's visa ceased. CZA19 was detained under s 189(1) of the Act as an unlawful non-citizen. CZA19 applied for a protection visa. On 10 November 2022, the Administrative Appeals Tribunal ("the AAT") found that CZA19 satisfied a criterion for a protection visa in s 36(2)(aa) of the Act because there was a real risk that if removed from Australia to his country of citizenship CZA19 would suffer significant harm. CZA19 remained in detention until 13 May 2024.

DBD24 entered Australia in April 2013, was detained under s 189(1) of the Act and released into community detention. DBD24 was arrested in 2021 and charged with drug offences, convicted, and imprisoned. DBD24 was released in June 2023 and detained under s 189(1) of the Act. In November 2021, DBD24 applied for a protection visa. On 18 December 2023, the AAT found that DBD24 satisfied s 36(2)(aa) of the Act. DBD24 remained in detention until 1 October 2024.

In May 2024, CZA19 sought a declaration that his detention from 10 November 2022 was unlawful, because from that time there was no real prospect of his removal becoming practicable in the reasonably foreseeable future in light of the AAT's decision. In July 2024, the Federal Court ordered CZA19's entitlement to that relief be heard as a separate question. That question was removed into the High Court. In November 2024, a special case was filed stating for the High Court the question whether, in their purported application to DBD24 between 18 December 2022 and 1 October 2024 (or part thereof), ss 189(1) and 196(1) of the Act were invalid on the ground that following the AAT's decision there was no real prospect of removal becoming practicable in the reasonably foreseeable future.

The High Court held that CZA19's and DBD24's claims were inconsistent with constitutional principle. Provisions of the Act requiring detention of an alien will be valid if the detention which they require and authorise is limited to what is reasonably capable of being seen as necessary for the purposes of deportation or to enable an application for an entry permit to be made and considered. Detention to enable visa processing remains constitutionally permissible for so long as that detention is reasonably capable of being seen as necessary for that purpose, which the claimants' detention was. Moreover, absent permissibility of removal of an unlawful non-citizen under the Act, the question of reasonable practicability of removal does not arise. Until 13 May 2024 and 1 October 2024 respectively, there was no power and duty under the Act for an officer to remove CZA19 or DBD24 from Australia. Their detention remained mandatory. Further, a majority of the High Court considered that the constitutional writ of mandamus is available to compel the Minister to consider the alien's status and the conditions, if any, on which they will be permitted to remain in Australia within a reasonable time.

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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