FEDERAL COURT OF AUSTRALIA

Mohammed v Minister for Immigration and Border Protection [2015] FCA 438

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| Citation: | Mohammed v Minister for Immigration and Border Protection [2015] FCA 438 |
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| Appeal from: | Mohammed v Minister for Immigration and Border Protection [2014] FCCA 2970 |
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| Parties: | **HAJIPASHA MOHAMMED v MINISTER FOR IMMIGRATION AND BORDER PROTECTION and MIGRATION REVIEW TRIBUNAL** |
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| File number: | VID 794 of 2014 |
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| Judge: | **TRACEY J** |
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| Date of judgment: | 12 May 2015 |
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| Catchwords: | **MIGRATION** – appeal from the Federal Circuit Court of Australia – judicial review of decision to refuse a Sub-class 572 Student visa – no appellable error made out |
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| Date of hearing: | 12 May 2015 |
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| Place: |  |
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| Division: | GENERAL DIVISION |
|  |  |
| Category: | Catchwords |
|  |  |
| Number of paragraphs: | 15 |
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| Counsel for the Appellant: | The Appellant appeared in person |
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| Solicitor for the First Respondent: | Mr N Rogers of the Australian Government Solicitor |
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| Counsel for the Second Respondent: | The Second Respondent entered a submitting appearance save as to costs |
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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| VICTORIA DISTRICT REGISTRY |  |
| GENERAL DIVISION | VID 794 of 2014 |

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| ON APPEAL FROM THE FEDERAL CIRCUIT COURT OF AUSTRALIA |

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| BETWEEN: | HAJIPASHA MOHAMMED  Appellant |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTION  First Respondent  MIGRATION REVIEW TRIBUNAL  Second Respondent |

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| JUDGE: | TRACEY J |
| DATE OF ORDER: | 12 MAY 2015 |
| WHERE MADE: | MELBOURNE |

THE COURT ORDERS THAT:

1. The appeal be dismissed with costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| VICTORIA DISTRICT REGISTRY |  |
| GENERAL DIVISION | VID 794 of 2014 |

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| ON APPEAL FROM THE FEDERAL CIRCUIT COURT OF AUSTRALIA |

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| BETWEEN: | HAJIPASHA MOHAMMED  Appellant |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTION  First Respondent  MIGRATION REVIEW TRIBUNAL  Second Respondent |

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| JUDGE: | TRACEY J |
| DATE: | 12 MAY 2015 |
| PLACE: | MELBOURNE |

# REASONS FOR JUDGMENT

1. The appellant is a citizen of India. He entered Australia on a Tourist (Class TR) visa. Whilst in Australia he applied for a Sub-class 572 Student visa.
2. It was necessary, in order for the appellant to obtain the Student visa, that he establish exceptional reasons for the grant of the visa.
3. The Minister’s delegate was not satisfied that such reasons existed and refused the application.
4. The appellant appealed to the Migration Review Tribunal (“the Tribunal”). The Tribunal afforded the appellant a hearing and gave consideration to the various reasons which the appellant had advanced to support his claim that he had exceptional reasons for the grant of the Student visa.
5. The Tribunal did not accept that these reasons were “exceptional” and affirmed the decision under review. It explained its reasons as follows:

“17. The Tribunal accepts that the applicant wishes to study in Australia and that completion of a Diploma of Business would assist him to develop his mobile phone/communications business and to improve his employability more generally. The Tribunal also accepts that the applicant is not a potential immigrant and he intends to return to India upon completion of his studies. The Tribunal also accepts that the applicant’s time and investment in his studies to date will be wasted if he is not granted a Student visa. The Tribunal also accepts that the applicant may experience difficulties obtaining a Student visa in India because his poor English levels do not enable him to study in the higher education sector.

18. However, the Tribunal considers that the matters raised by the applicant are commonplace amongst applicants for a Student visa and they are not in any way exceptional. Further, the Tribunal does not accept that granting the visa would be of benefit to Australia in the sense of improving bilateral Indian/Australian relations or providing a significant economic benefit to Australia.

19. Ultimately, the Tribunal dos not find any of the reasons advanced by the applicant to be ‘exceptional’ in the ordinary meaning of the word, whether considered individually or cumulatively. Accordingly, the Tribunal is not satisfied that the applicant has established exceptional reasons for the grant of the visa and, therefore, he does not satisfy cl.572.227.”

1. The appellant sought judicial review of the Tribunal’s decision in the Federal Circuit Court. He relied on seven grounds, most of which attacked the merits of the Tribunal’s decision. Only two remotely suggested jurisdictional error on the part of the Tribunal. They were that:

* the Tribunal member had “not even given some extension to provide the documents”; and
* the applicant “did not even find any procedural fairness in [the Tribunal] decision.”

1. The trial judge rejected all grounds. In dealing with the two grounds which might have been thought to allege jurisdictional error her Honour held that there had been no refusal of an extension of time with which to provide documents because no such request had been made by the appellant. Her Honour also held that there had been no denial of procedural fairness: the appellant had been aware that he needed to establish exceptional reasons in order to be granted the visa, he had submitted a written statement on which he relied for this purpose, he had been invited to attend a hearing, he was represented at the hearing and was given a full opportunity to make submissions.
2. The appellant’s application for judicial review was dismissed.
3. The appellant has now appealed to this Court. The grounds appearing in the notice of appeal are unintelligible.
4. The appellant appeared in person at the hearing of the appeal. He had the assistance of an interpreter. When invited to explain the grounds on which he was alleging error on the part of the Federal Circuit Court he responded that he wanted to learn English in Australia and to obtain additional qualifications. He stressed that he had a successful business in India and that he did not wish to enter the Australian workforce. He also said that he did not wish to be dependent on his wife, who spoke English well.
5. Despite being expressly invited to do so the appellant pointed to no legal error on the part of the Tribunal or the Federal Circuit Court.
6. I have carefully examined the reasons of the Tribunal. No jurisdictional error is disclosed.
7. I have also read carefully the reasons of the trial judge and I agree with her, for the reasons which she has given, that no grounds existed for the intervention of the Court.
8. No appellable error has been disclosed.
9. The appeal must be dismissed with costs.

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| I certify that the preceding fifteen (15) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Tracey. |

Associate:

Dated: 12 May 2015